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Supreme Court of the United States

OCTOBER TERM, 1956

No. 204

WILLIAM BENZ, ET AL., INDIVIDUALLY AND AS REPRESENTATIVES OF ALL OF THE MEMBERS OF THE SAILORS' UNION OF THE PACIFIC, ET AL., PETITIONERS,

vs.

COMPANIA NAVIERA HIDALGO, S. A., A CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 27, 1956
CERTIORARI GRANTED NOVEMBER 5, 1956

Nos. 14663 - 14664 - 14665

United States
Court of Appeals
for the Ninth Circuit.

WILLIAM BENZ, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

M. D. MacRAE, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

JEFF MORRISON, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

Transcript of Record

Appeals from the United States District Court, for the District of Oregon

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—4-22-55

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States Court of Appeals
for the Ninth Circuit

No. 14663

WILLIAM BENZ, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

No. 14664

M. D. MacRAE, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

No. 14665

JEFF MORRISON, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

MOTION AND ORDER TO CONSOLIDATE CAUSES FOR APPEAL

Come now the appellants in the above-entitled appeals and move the Court for an order consolidating the above-entitled appeals for the reason that said causes were tried together in the Court below,

and their consolidation herein will facilitate the preparation of the Record on Appeal, the Briefs and the Argument of said appeals.

TANNER & CARNEY,

/s/ RICHARD R. CARNEY,
Attorneys for Appellants.

It Is Hereby Stipulated and Agreed by and between the parties hereto by and through their respective counsel that the above-entitled appeals may be consolidated.

/s/ RICHARD R. CARNEY.
Of Attorneys for Appellants.

/s/ JOHN D. MOSSER,
Of Attorneys for Appellee.

Order

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge;

/s/ WM. HEALY,

/s/ WALTER L. POPE,
United States Circuit Judges.

In the United States Court of Appeals
for the Ninth Circuit

No. 14664

M. D. MacRAE, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

MOTION TO COMBINE RECORDS

Come now the appellants, and move the Court for an order to include, combine and consider as a part of the record on appeal in the above-entitled cause the following portions of the record on appeal in the case of William Benz, et al., appellants, vs. Compania Naviera Hidalgo, S.A., appellee, No. 14663:

(a) Stipulation for Consolidation of Cases for Trial.

(b) The Pretrial Exhibits and Stipulation for and Testimony in Narrative Form.

(c) Transcript of the Proceedings at the Pretrial and Trial.

(d) Stipulation Concerning Evidence of Subsequent Labor Trouble of the SS Riviera.

(e) Order Receiving Exhibits.

That the cases of William Benz, et al., appellants, vs. Compania Naviera Hidalgo, S.A., appellee No. 14663, and Jeff Morrison, et al., appellants, vs. Compania Naviera Hidalgo, S.A., appellee, No. 14664, and M. D. MacRae, et al., appellants, vs.

Compania Naviera Hidalgo, S.A., appellee, No. 14665, were tried together in the Court below, and a single record of testimony and exhibits was developed; that this motion is made for the purpose of avoiding duplication in the records on appeal in said cases.

TANNER & CARNEY,

/s/ RICHARD R. CARNEY,
Attorneys for Appellants.

It Is Hereby Stipulated and Agreed by and between the parties hereto through their respective counsel that the record on appeal in the above-entitled cause may include the aforementioned portions of the record on appeal in the case of William Benz, et al., appellants, vs. Compania Naviera Hidalgo, S.A., appellee.

/s/ RICHARD R. CARNEY,
Of Attorneys for Appellants.

/s/ JOHN D. MOSSER,
Of Attorneys for Appellee.

Service of copy acknowledged.

In the United States Court of Appeals
for the Ninth Circuit

No. 14665

JEFF MORRISON, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

MOTION TO COMBINE RECORDS

Come now the appellants, and move the Court for an order to include, combine and consider as a part of the record on appeal in the above-entitled cause the following portions of the record on appeal in the case of William Benz, et al., appellants, vs. Compania Naviera Hidalgo, S.A., appellee, No. 14663:

(a) Stipulation for Consolidation of Cases for Trial.

(b) The Pretrial Exhibits and Stipulation for and Testimony in Narrative Form.

(c) Transcript of the Proceedings at the Pretrial and Trial.

(d) Stipulation Concerning Evidence of Subsequent Labor Trouble of the SS Riviera.

(e) Order Receiving Exhibits.

That the cases of William Benz, et al., appellants, vs. Compania Naviera Hidalgo, S.A., appellee, No. 14663, and Jeff Morrison, et al., appellants, vs. Compania Naviera Hidalgo, S.A., appellee, No. 14664,

and M. D. MacRae, et al., appellants, vs. Compania Naviera Hidalgo, S.A., appellee, No. 14665, were tried together in the Court below, and a single record of testimony and exhibits was developed; that this motion is made for the purpose of avoiding duplication in the records on appeal in said cases.

TANNER & CARNEY,

/s/ RICHARD R. CARNEY,

Attorneys for Appellants.

It Is Hereby Stipulated and Agreed by and between the parties hereto through their respective counsel that the record on appeal in the above-entitled cause may include the aforementioned portions of the record on appeal in the case of William Benz, et al., appellants, vs. Compania Naviera Hidalgo, S.A., appellee.

/s/ RICHARD R. CARNEY,

Of Attorneys for Appellants.

/s/ JOHN D. MOSSER,

Of Attorneys for Appellee.

Service of copy acknowledged.

[Endorsed]: Filed February 25, 1955.

[Title of Court of Appeals and Cause.]

Nos. 14663, 14664 and 14665

MOTION TO CONSIDER ORIGINAL EXHIBITS

Come now the appellants and move the Court for an order relieving them from printing or reproducing the following numbered exhibits, and to consider said exhibits in their original form without reproduction, for the reason that said exhibits consist of photographs, ship's articles, repair specifications and other items too bulky to be printed:

Exhibit No. 3—Ship's Charter.

Exhibit No. 4—Ship's Articles.

Exhibit No. 8—Laundry Account Invoice.

Exhibit No. 9—Repair Specifications.

Exhibit No. 10—Report of American Bureau of Shipping.

Exhibit No. 11—Packing Slips and Invoices Attached to Depositions.

Exhibit No. 13—SUP Constitution Booklet.

Exhibits Nos. 24 to 34—Recapitulation of Chartering Transactions.

Exhibit No. 52—Booklet, Bylaws of Masters, Mates & Pilots.

Exhibit No. 53—Booklet National Maritime Board Year Book.

Exhibits Nos. 75 to 80—Photogr s.

Dated February 21, 1955.

TANNER & CARNEY,

/s/ RICHARD R. CARNEY,
Attorneys for Appellants.

Service of copy acknowledged.

[Endorsed]: Filed February 25, 1955.

[Title of Court of Appeals and Cause.]

Nos. 14663, 14664 and 14665.

STIPULATION TO CONSIDER ORIGINAL EXHIBITS

It Is Hereby Stipulated and Agreed by and between the parties hereto, through their respective counsel, that the Court may grant appellants' motion to be relieved from printing or reproducing the exhibits mentioned in said motion, and that the Court may consider said exhibits together with the printed record herein.

Dated February 21, 1955.

/s/ RCHARD R. CARNEY,
Of Counsel for Appellants.

/s/ JOHN D. MOSSER,
Of Counsel for Appellee.

[Endorsed]: Filed February 25, 1955.

No. 14663

United States
Court of Appeals
for the Ninth Circuit.

WILLIAM BENZ and ROBERT WILLIAMS, Individually, and as Representatives of All the Members of Sailors' Union of the Pacific and Anyone That Sailors' Union of the Pacific Claims to Represent for the Purpose of Collective Bargaining,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S. A.

Appellee.

Transcript of Record

Appeal from the United States District Court for the District of Oregon

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—4-22-55

In the United States District Court
for the District of Oregon

Civil No. 6699

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

WILLIAM BENZ and ROBERT WILLIAMS, Individually and as Representatives of All Members of the Sailors' Union of the Pacific,

Defendants.

PRE-TRIAL ORDER

This matter came on for pre-trial herein before the undersigned judge of the above-entitled Court on March 16, 1954, plaintiff appearing through John D. Mosser and Gunther F. Krause, of its attorneys, and defendants, William Benz and Robert Williams, individually, appearing through their attorneys, K. C. Tanner and Richard R. Carney, upon consideration of the matters appearing in the pleadings herein.

Nature of Proceedings

This is a suit by the plaintiff to recover damages on account of the picketing of its vessel by the defendants. A preliminary injunction was issued out of this Court and an appeal was taken by the defendants to the United States Court of Appeals for the Ninth Circuit. That appeal was dismissed on the ground that the injunction was moot because the

plaintiff's vessel had departed. The Court of Appeals stated that plaintiff's claim for damages "is one which it has the right to prosecute in the Court below wholly apart for any claim for an injunction" and remanded for further proceedings with the admonition,

> "——that what was determined by the Court below in issuing such injunctions is without further force or effect, and cannot be relied upon as res adjudicata, as creating an estoppel, or as the law of the case, all to the end that the issues relating to the claim of damages may be tried by the parties as free from the effects of such injunctions, as if the same had not been issued."

The case is now before this Court on the question of damages.

Agreed Facts

The following are admitted by all the parties and no proof need be produced thereupon at the trial:

I.

At all times herein mentioned plaintiff was and is now a corporation duly organized and existing under and by virtue of the laws of the Republic of Panama.

II.

At all times herein mentioned, defendants, William Benz and Robert Williams, were and now are members of The Sailors' Union of the Pacific, a voluntary, unincorporated association having a Secretary-Treasurer, Port Agents and Patrolmen. At

all times herein mentioned, the Secretary-Treasurer of said Union, its principal executive officer, was and is now a resident of the State of California. At all times herein mentioned the defendants, Benz and Williams, were and are now the Port Agent and Patrolman, respectively, of said Union in the Port of Portland, Oregon, and were citizens and inhabitants of the State of Oregon. Plaintiff is a citizen and inhabitant of a state or country different from that of each of said defendants.

III.

At all times herein mentioned, the Sailors' Union of the Pacific had and now has a membership upwards of 5,000 men, many of whom are employed on ocean-going vessels so that it would be impracticable and impossible to join all of said members as defendants in this suit.

IV.

In March, 1952, plaintiff became the owner of the SS Riviera, an American-built Liberty ship, and at all times herein mentioned said vessel was registered at the Port of Monrovia, and sailing under the flag of the Republic of Liberia.

V.

Between March and August of 1952, articles were signed on the SS Riviera for a voyage from Bremen, Germany, for a period of two years or until the earlier return of the vessel to a port on the Continent of Europe. A true copy of said articles is Exhibit No. .... Said articles are on a form generally employed in the British Merchant Marine. Said ar-

ticles were signed by citizens of foreign countries. The wage rates specified therein for each crew member are equal to or higher than those customarily paid for similar employment in the British Merchant Marine.

VI.

After leaving Bremen, said SS Riviera proceeded to New Orleans, Louisiana, where a cargo of grain was loaded. Said cargo was carried to and discharged at a port or ports in India where a cargo of coal was loaded. Said cargo of coal was carried to and unloaded to a port or ports in Japan. The SS Riviera then sailed in ballast to the Port of Portland, Oregon, where it arrived on September 3, 1952, and docked at Swan Island Dry Dock.

VII.

The purposes for which the vessel came to the Port of Portland, Oregon, were to complete an insurance survey, carry out repairs indicated as needed by said survey and voyage repairs, and to load a cargo of wheat for the carriage of which to India the said vessel had been chartered by its owners. A true copy of said charter is Exhibit No..... Both the charter for the carriage of the cargo of grain from New Orleans and from Portland were contracted for under the Aid to India Act.

VIII.

On September 3, 1952, the SS Riviera arrived at the Port of Portland, Oregon, and was docked at the Port of Portland Dry Dock at Swan Island. That

thereafter and on or about September 9, 1952, twenty-four of the crew members of said vessel ceased working on said vessel, went on strike and refused to carry out the orders of the master; that on said date the members of the crew demanded their pay and their transportation to their ports of engagement, and on said date the plaintiff, through the master of said vessel, told the members of the crew to either continue work or they were discharged.

IX.

From September 9, 1952, until September 26, 1952, said striking members of the crew picketed the vessel. On or about September 15, 1952, said striking members of the crew of the SS Riviera designated the Sailors' Union of the Pacific as their collective bargaining representative. One of such written designations is Exhibit No.....

X.

From the date of said strike up to and including September 26, 1952, the said striking crewmen of said vessel remained aboard the vessel, continued to occupy their quarters, refused to continue to work aboard said vessel and refused to leave the vessel. On or about September 18, 1952, plaintiff filed in this Court a possessory libel, bearing Civil No. 6629. On September 25, 1952, said striking crewmen were ordered by order of this Court in said possessory libel to leave said vessel and said crewmen, on September 26, 1952, left said vessel.

XI.

Said striking crewmen, immediately upon leaving the vessel, were arrested by officers of the United States Immigration and Naturalization Service, and were held in custody by the Immigration and Naturalization Service until approximately October 24, 1952, at which time said crewmen were ordered to be deported from the United States. The orders of deportation did not grant said crew members permission for voluntary departure. At all times said Immigration and Naturalization Service was willing to allow voluntary departure by said crewmen members aboard the SS Riviera if re-employed upon that vessel; but said crew members would have been considered deportees if they had so voluntarily departed after the entry of said orders.

XII.

Said striking crew members or others acting for them picketed said vessel from September 26 through October 13, 1952, when they withdrew their picket line. Immediately after the withdrawal of said picket line and on October 14, 1952, members of the Sailors' Union of the Pacific, a voluntary unincorporated labor organization, acting pursuant to a resolution duly adopted by said Union, a true copy of which is Exhibit No. ...., commenced picketing said vessel and continued to picket it until restrained and enjoined from further picketing by this Court on November 26, 1952. All of said picketing at, around or near the SS Riviera was at

all times conducted in a peaceful manner and without any violence.

XIII.

Employees of stevedoring and ship repair firms and other shore employees ordered to work on the said SS Riviera refused to so work while said pickets representing the Sailors' Union of the Pacific were present. Immediately after the removal of said picket line, employees of contractors with whom plaintiff had contracted for the repair and preparation of the vessel to carry her cargo of grain to India resumed work on said vessel as requested.

XIV.

On or about October 2, 1952, the said striking former crew members of the SS Riviera filed a libel in admiralty, said suit bearing Civil No. 6652. Plaintiff herein filed a claim of owner and answered said libel. On or about October 9, 1952, plaintiff herein filed a libel in admiralty against the Sailors' Union of the Pacific, William Benz, individually and as port agent of the Sailors' Union of the Pacific; Robert Williams, individually and as patrolman of the Sailors' Union of the Pacific, said suit bearing Civil No. 6661 of this Court. Said libels were consolidated for trial. Libelants in said Civil No. 6652 and Respondents in Civil No. 6661 both appeared by the same counsel, Messrs. Tanner and Carney, at said trial. True copies of the libel, answer, findings of fact and conclusions of law, and decree in Civil No. 6661 are Exhibits Nos. ...., ..., ..., and ..... A true copy of the opinion of

the Court delivered in said causes October 22, 1952, is Exhibit No. .....

XV.

Many members of the Sailors' Union of the Pacific are employed aboard American flag vessels carrying grain between ports, including the Port of Portland, in the United States and ports in India, and said members and the Union have an economic interest in the wages, hours and conditions of employment in said trade.

XVI.

On December 11, 1952, plaintiff paid the decree of $2,779.60 entered by this Court in Civil No. 6652 on that date.

XVII.

Defendants would have continued to picket the SS Riviera after November 26, 1952, had they not been enjoined from doing so by this court.

XVIII.

During the period October 14 through November 26, 1952, plaintiff necesarily incurred expenses for the operation and maintenance of said vessel in its idle condition, in the following amounts, each figure being per day:

Agency fees	$ 15.00
Maintenance of crew members detained by Immigration	7.50
Guard at ship, midnight to 8:00 a.m. ..	16.04
Wharfage—Port of Portland	22.00
Wharfage—Albina Engine	47.00

Insurance Premiums	57.23
Wages, Master and crew	40.00
Subsistence, Master and crew	40.00
Miscellaneous Overhead	5.23
Total	$250.00

XIX.

Neither a contract nor collective bargaining agreement ever existed between the plaintiff and William Benz or Robert Williams of the Sailors' Union of the Pacific.

XX.

That from September 9, 1952, upon the termination of employment of said crewmen of the SS Riviera, until December ....., 1952, there were approximately twenty-five jobs open for seamen on the the SS Riviera.

Plaintiffs' Contentions of Fact

I.

The Sailors' Union of the Pacific has rules and regulations by virtue of which its members act as an organized body represented by its Secretary-Treasurer, Port Agents and Patrolmen. Defendants Benz and Williams are representatives of a class composed of all of the members of the Sailors' Union of the Pacific.

II.

The members of the crew of the SS Riviera who went on strike on and after September 9, 1952, did so for the purpose of forcing plaintiff to enter into

new articles with them for a shorter duration and at wage rates and other conditions more favorable to them than those contained in the articles then in effect.

III.

At all times herein mentioned, plaintiff complied with all the terms and conditions of the said articles opened in March, 1952, and performed all of its obligations to members of the crew.

IV.

The defendants are parties in privity with the libelants in that certain suit bearing Civil No. 6652 and described more fully in Paragraph XIV of the Agreed Facts.

V.

The Sailors' Union of the Pacific acted as the collective bargaining agent of said striking former crew members after being so designated by them.

VI.

The sole purpose of said picketing by the members of the Sailors' Union of the Pacific was to compel the plaintiff to re-employ the said discharged, striking members of the crew of the said SS Riviera for a period shorter than that stated in the articles, and at wage rates and other conditions more favorable to them than those stated in said articles.

VII.

There is no labor dispute between plaintiff and defendants or the Sailors' Union of the Pacific or

between plaintiff and any members or former members of the crew of the SS Riviera.

VIII.

Plaintiff was unable to use its vessel for the period from October 14 through November 26, 1952, and the sole proximate cause of such loss of use was the said picketing by defendants.

IX.

As a result of said picketing and acts of defendants, plaintiff suffered immeasurable and irreparable damage to its reputation for honesty and fair dealing, and its ability to obtain charters for the SS Riviera has been impaired; and plaintiff was further damaged and lost earnings at the rate of $800.00 per day during the period October 14 through November 26, 1952; and plaintiff was further damaged and incurred expenses at the rate of $250.00 per day for the maintenance of said vessel and its crew during said period, all to its total measurable damage in the amount of $46,200.00. In addition, thereto, defendants threatened to and would have continued their said acts after November 26, 1952, to plaintiff's continuing damage, and in order to mitigate its said daily recurring damages, plaintiff was forced to employ legal counsel and to incur court costs and other expenses to obtain an injunction against further picketing, and thereby suffered special damages in the amount of $7,500.00.

X.

At all times after the filing of the libel in Civil No. 6652, plaintiff was ready, willing and able to furnish a bond in the amount of $25,000 as fixed by this Court for release of the SS Riviera, but interest and/or premium expense on such bond would have been a needless expense while a picket line was maintained at said vessel and only have added to the detention damages sustained by plaintiff. To mitigate such damages such a bond was not posted.

XI.

At all times herein mentioned, the SS Riviera was engaged in the trade of a tramp-freighter and did not regularly carry any particular type or types of freight or call at any particular port or ports. It has not called at a port in the United States since leaving Portland in December, 1952.

Defendants' Contentions of Fact

I.

The defendants William Benz and Robert Williams are not the representatives of all of the Sailors' Union of the Pacific, but perform in the Port of Portland only certain limited duties in connection with the Sailors' Union of the Pacific in its Branch Office in said port. The members of the Sailors' Union of the Pacific do not have such substantially identical interests in the subject matter of the suit as to allow their joinder in a class suit.

II.

The members of the crew of the SS Riviera who refused to work after September 9, 1952, did so on

account of the unseaworthiness of the vessel, particularly with respect to the sanitation and cleanliness of the vessel, the food served on the vessel and the safety conditions and appliances on the vessel; that said crew members considered their articles breached and demanded their pay and their transportation to their ports of engagement. The crew members refused to work and went on strike to remedy the unseaworthy condition of the vessel and not for higher wages and articles of shorter duration.

III.

From about October 14, 1952, until November 26, 1952, the Sailors' Union of the Pacific on divers occasions attempted to settle and compromise the dispute which had arisen between the plaintiff and its former crew members on the SS Riviera; that agents of the Sailors' Union of the Pacific attempted to negotiate with representatives of the plaintiff in order to determine the persons who would be employed aboard the SS Riviera and at what wages and under what working conditions said employment could be arranged; that in so negotiating, the Sailors' Union of the Pacific acted as the collective baraining agent for the former members of the crew of the SS Riviera and also acted in its own behalf and for its own interests in protecting its economic interest in the business and trade in which the plaintiff was engaged.

IV.

The plaintiff after the discharge of the former

members of the crew of the SS Riviera refused to employ members of the Sailors' Union of the Pacific in the operation of its vessel, and refused to operate its vessel under conditions and terms of employment under which members of the Sailors' Union of the Pacific are employed on other vessels in the same trade.

V.

The Sailors' Union of the Pacific and its members have an economic interest in the working conditions and wages of the seamen employed aboard the vessels engaged in said grain charter trade in which the plaintiff's vessel, the SS Riviera, was engaged; that the low wages and poor working conditions under which the plaintiff operated and continued to operate its vessel tended to undermine and destroy the standards set up and maintained by the Sailors' Union of the Pacific and other maritime unions who have members engaged in said trade; that as a result of the methods of operation by the plaintiff and by other shipowners operating in a similar manner, the plaintiff has been, and still is, able to underbid American shipowners for charters in said trade, and members of the Sailors' Union of the Pacific have been, and are now, deprived of employment in said grain charter trade.

VI.

From September 18, 1952, to September 25, 1952, the SS Riviera was in the custody of the U. S. Marshal pursuant to the possessory libel filed by plaintiff, civil number 6629 of this court.

VII.

From October 2, 1952, the SS Riviera was in the custody of the U. S. Marshal and unclaimed and unreleased by bond pursuant to the libel filed for wages by the crewmen, Civil No. 6652, and was not released until the decree in said suit was paid on December 11, 1952.

VIII.

The idleness of the SS Riviera in the Port of Portland, Oregon, was not proximately caused by any acts or conduct on the part of the defendants William Benz or Robert Williams, or on the part of the Sailors' Union of the Pacific.

IX.

The plaintiff was not damaged as the proximate result of the picketing of the SS Riviera.

X.

The defendants herein are not parties in privity with the libelants in the wage libel, Civil No. 6652, of this Court.

XI.

The SS Riviera sailed from Portland, Oregon, on December 23, 1952, with a crew consisting mostly of British and Canadian seamen, none of whom was affiliated with the Sailors' Union of the Pacific. That on or about January 10, 1953, when the SS Riviera reached Honolulu, T. H., fifteen of said new crewmen quit the ship in protest against the ship's "scummy drinking water, lousy plumbing facilities,

continual boiler trouble and general unsanitary working conditions."

That on or about January 15, 1953, nine of said fifteen crewmen returned to the ship but six were replaced before the vessel's departure.

When the vessel reached Bombay on March 7, 1953, five members of the crew quit the ship because of the inadequate food and sanitation aboard the ship.

Plaintiff's Contentions of Law

I.

The Court has jurisdiction of the parties and the subject matter.

II.

This is a true class suit and the members of the Sailors' Union of the Pacific constitute a class and are represented by defendants Benz and Williams.

III.

There is no labor dispute between plaintiff and any of the defendants or the Sailors' Union of the Pacific and there is no labor dispute between plaintiff and any of said members or former members of the crew of the SS Riviera.

IV.

The findings of fact and conclusions of law entered in Civil No. 6652 are res adjudicata in this proceeding and defendants are bound thereby and estopped from relitigating the same and more specifi-

cally are estopped from denying plaintiff's Contentions of Facts II and III.

V.

Plaintiff is entitled to a judgment and decree against defendants for its general damages of $46,200.00 and its special damages of $7,500.00, and for its costs and disbursements herein, and to have execution on said judgment and decree against:

(a) Any funds or property held by or for the general use and benefit of members of the Sailors' Union of the Pacific.

(b) Defendants William Benz and Robert Williams or any of them.

Defendants' Contentions of Law

I.

This Court has no jurisdiction in this suit over the Sailors' Union of the Pacific or its members but only jurisdiction over William Benz and Robert Williams in their individual capacities.

II.

The facts herein do not constitute the proper subject matter for a class or representative suit.

III.

The damages, if any, sustained by the plaintiff are damum absque injuria because of the existence of a labor dispute in at least one of the following particulars:

(a) That a labor dispute existed between the plaintiff and the former members of the crew of the SS Riviera concerning the terms and conditions of their employment aboard their vessel.

(b) That a labor dispute existed between the plaintiff and the Sailors' Union of the Pacific in its capacity as collective bargaining representative for former members of the crew of the SS Riviera concerning the terms and conditions of employment aboard said vessel and the representation of the employees of the plaintiff.

(c) That a labor dispute existed between the plaintiff and the Sailors' Union of the Pacific concerning the working conditions employed by the plaintiff aboard said vessel in the trade and commerce in which said union is engaged.

(d) That a labor dispute existed between the plaintiff and the Sailors' Union of the Pacific concerning the employment of members of the Sailors' Union of the Pacific aboard the SS Riviera.

(e) That a labor dispute existed between the Sailors' Union of the Pacific and the members of the crew of the SS Riviera who did not go on strike.

IV.

This Court is deprived of jurisdiction by reason of the Norris-LaGuardia Act because of the existence of said labor disputes.

V.

The picketing by the defendants was a lawful exercise of their right of free speech.

VI.

The damages sustained by the plaintiff as the proximate result of the conduct of the defendants is too indefinite and uncertain to be allowed.

VII.

The refusal to cross the picket line by employees of firms who contracted with the plaintiff for the loading and repairing of the SS Riviera was an independent, intervening cause of plaintiff's damages, if any, due to the idleness of the vessel.

VIII.

From October 2, 1952, until December 11, 1952, when said vessel was in the custody of the United States Marshal pursuant to a libel, the plaintiff sustained no damages on account of the idleness of the vessel.

IX.

The Findings of Fact and Conclusions of Law entered in the wage libel, Civil No. 6652, of this Court, are not res adjudicata in this proceeding and the defendants herein are not bound thereby.

X.

Neither William Benz nor Robert Williams nor the Sailors' Union of the Pacific, nor anyone acting on their behalf, induced the members of the crew of the Riviera to breach their articles of agreement or contract of employment with the plaintiff and to

strike and to refuse to obey the orders of the master of the vessel.

XI.

The Findings of Fact and Conclusions of Law entered in the libel against the Sailors' Union of the Pacific, Civil No. 6661, are res adjudicata in this proceeding, and plaintiff is bound thereby, particularly with respect to defendants' Contention of Law X.

XII.

That the plaintiff cannot split its cause of action, if any, against the defendants herein, because the injury or wrong, if any, which is the subject matter of this suit, was involved in a prior proceeding entitled Compania Naviera Hidalgo, S.A., Libelant, v. Sailors' Union of the Pacific, et al., respondents, being Civil No. 6661 of the files of this Court, upon which judgment was entered prior to the institution of this suit.

Issues Relating to Jurisdiction of the Parties

I.

Do the members of the Sailors' Union of the Pacific have sufficiently identical interests in the subject matter of this suit to constitute a class subject to suit by service upon representatives?

II.

Are defendants Benz and Williams, by virtue of their positions as members and officers of the Sailors' Union of the Pacific and their interests as defendants herein, appropriate and capable persons

to represent the interests of all of the members of said union herein?

III.

Is a class suit a proper device to recover damages for picketing from an unincorporated labor organization?

Issues on the Merits

IV.

Did a labor dispute exist between the plaintiff and the former members of the crew of the SS Riviera concerning the terms and conditions of the employment aboard the vessel?

(a) Did the members of the crew of the SS Riviera who went on strike do so for the purpose of forcing plaintiff to enter into new articles with them at wage rates and other conditions more favorable to them than the articles they had signed?

(b) Did the members of the crew of the SS Riviera go on strike on account of the conditions existing on the vessel which they believed made it unseaworthy?

(c) Did plaintiff comply with all of the terms and conditions of said articles and perform all of its obligations to members of the crew of the SS Riviera?

V.

Did a labor dispute exist between the plaintiff and the Sailors' Union of the Pacific in its capacity as collective bargaining agent for the former members of the crew of the SS Riviera concerning the

terms and conditions of employment aboard the vessel and the representation of said crew members?

(a) If it is found that the former crew members broke their articles and deserted their ship, may their collective bargaining agent picket the vessel during the term of said articles to induce the owner of the vessel to re-employ the former crew members at wage rates and other conditions more favorable than contained in the articles?

VI.

Did a labor dispute exist between the plaintiff and the Sailors' Union of the Pacific concerning the economic interest of the Sailors' Union of the Pacific and the working conditions existing aboard the SS Riviera?

VII.

Did a labor dispute exist between the plaintiff and the Sailors' Union of the Pacific concerning the employment by the plaintiff of members of the Sailors' Union of the Pacific aboard the SS Riviera?

VIII.

Did a labor dispute exist between the Sailors' Union of the Pacific and the members of the crew employed by the plaintiff on the SS Riviera which crew members did not go on strike?

IX.

Did the Sailors' Union of the Pacific picket the SS Riviera from October 14, 1952, to November 26, 1952, for the sole purpose of compelling the plain-

tiff to re-employ the striking members of the crew at wages and other conditions more favorable to them than contained in the articles they had signed, or was said picketing for that purpose and/or in furtherance of the labor dispute mentioned in paragraphs V, VI, VII and VIII above?

X.

Does the existence of a labor dispute, if any, render damages, if any, sustained by the plaintiff damnum absque injuria?

(a) Does the Norris-LaGuardia Act merely limit the Court's jurisdiction for the issuance of injunctions in labor disputes, or does the act define the substantive rights of parties in labor disputes?

XI.

Was the picketing by the defendants a lawful exercise of their right of free speech so that the damages, if any, sustained by the plaintiff are damnum absque injuria?

XII.

Were the damages sustained by the plaintiff, if any, a proximate result of the picketing of the vessel by the defendants?

(a) Was the refusal of the employees of contractors with whom plaintiff had contracted for repair and loading of the vessel to cross the picket line an independent intervening cause of plaintiff's damages, if any?

(b) Were the damages, if any, sustained by the plaintiff as a proximate result of the picketing by

the defendants too indefinite and uncertain to be allowed?

(c) Was plaintiff deprived of the use of the vessel by virtue of its being in the custody of the U. S. Marshal pursuant to a libel in this Court, Civil No. 6652, from October 2, 1952, until December 11, 1952?

(1) Was the vessel in the custody of the Marshal from October 2nd to December 11th, 1952, pursuant to said libel?

XIII.

What is the amount of the damage sustained by plaintiff as a proximate result of the acts of defendants, if any?

XIV.

Should any judgment and decree in favor of plaintiff be entered against the defendants Benz and Williams and any funds or property held by Sailors' Union of the Pacific or for the general use and benefit of members of the Sailors' Union of the Pacific or any of them; or should it run only against defendants Benz and Williams or either of them?

XV.

Has the plaintiff split its cause of action?

Issues of Evidence

XVI.

Are defendants herein bound by the findings of fact and conclusions of law, entered in Civil No. 6652 and estopped from relitigating questions there decided?

(a) Are defendants herein parties in privity with libelant in Civil No. 6652?

XVII.

Is the plaintiff bound by the Findings of Fact and Conclusions of Law entered in the libel against the Sailors' Union of the Pacific for damages in Civil No. 6661 of the files of this court, and estopped from relitigating the questions therein decided?

Denials

Plaintiff denies defendants' contentions and defendants deny plaintiff's contentions.

Exhibits

The parties have entered into a separate stipulation for the trial of Civil Nos. 6699, 6635 and 6645 together, and for the identification and admission of exhibits at said trial.

The making and entry of this pre-trial order shall supersede the pleadings at the trial, and this order shall not, except by consent of both parties and of the court, be amended unless modified at the trial to prevent mainfest injustice.

Dated this 22nd day of March, 1954.

/s/ GUS J. SOLOMON,
Judge.

Approved:

/s/ JOHN D. MOSSER,
Of Attorneys for Plaintiff.

/s/ RICHARD R. CARNEY,
Of Attorneys for Defendants.

[Endorsed]: Filed March 22, 1954.

In the United States District Court
for the District of Oregon

Civil No. 6699

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

WILLIAM BENZ, et al.,

Defendants.

Civil No. 6735

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

M. D. MacRAE, et al.,

Defendants.

Civil No. 6745

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

JEFF MORRISON, et al.,

Defendants.

STIPULATION

It is Hereby Stipulated by and between the parties appearing herein, by and through their respective attorneys of record, that should the court

find that evidence relating to the condition of the SS Riviera and the action of its new crew members after leaving the Port of Portland while said vessel was en route to and at the Ports of Honolulu, Hawaii, and Bombay, India, is relevant and material, then and in that event said defendants may have an opportunity to produce evidence by deposition or otherwise of said condition of the vessel, and said action of its crew members, with respect to the condition of the vessel at said times and places.

It is Further Stipulated that the list of exhibits and the exhibits contained in the pre-trial order of Compania Naviera Hidalgo, S.A., Plaintiff, vs. William Benz, et al., defendants, Civil No. 6629, shall also be considered and included as part of the pre-trial orders of Compania Naviera Hidalgo, S.A., plaintiff, vs. M. D. MacRae, et al., Civil No. 6735, and Compania Naviera Hidalgo, S.A., plaintiff, vs. Jeff Morrison, et al., defendants, Civil No. 6745.

Dated at Portland, Oregon, March 22, 1954.

/s/ JOHN D. MOSSER,
Of Attorneys for Plaintiff.

/s/ RICHARD R. CARNEY,
Of Attorneys for Defendants.

[Endorsed]: Filed March 22, 1954.

[Title of District Court and Cause.]

Nos. 6699, 6735 and 6745

STIPULATION

It is Hereby Stipulated by and between the attorneys for the parties in the above-entitled causes that said causes may be tried together.

It is Further Stipulated that any of the testimony or other evidence heretofore offered and received in Civil Nos. 6652, 6661, 6699, 6735 and 6745, as recorded in the transcript of proceedings therein may be offered at the trial of the above-entitled causes on the issues of damages with the same effect as if said witnesses had testified or such evidence had been offered at such trial, subject only to objections as to relevancy and materiality.

It is Further Stipulated that the following Exhibits have been identified and may be offered in evidence without further identification, subject to objections as to relevancy and materiality and, in the case of exhibits not previously admitted in one of the causes herein above referred to, as to competency:

Plaintiff's Exhibits

1. Transcript of Proceedings in Civil No. 6699.
2. Transcript of Proceedings in Civil Nos. 6652 and 6661.
3. Ship's Charter.
4. Ship's Articles: (Sub-Exhibit 8, Civil 6652), (Pre-Trial Exhibit 2).

5. Seaman's Blue Card: (Peterson), (Sub-Exhibit 9 of Pre-Trial Exhibit 2).

6. Seaman's Blue Card: (Pedersen), (Sub-Exhibit 10 of Pre-Trial Exhibit 2).

7. Seaman's Blue Card: (Kaiser), (Sub-Exhibit 11 of Pre-Trial Exhibit 2).

8. Laundry Account, Ship Chandler's Invoice, Aarhus, Denmark, (Sub-Exhibit 12 of Pre-Trial Exhibit 2).

9. 6 Sheets Specifications, Job No. 52173: (Sub-Exhibit 13 of Pre-Trial Exhibit 2).

10. Report of American Bureau of Shipping 4-17-52, No. 21,623: (Sub-Exhibit 14 of Pre-Trial Exhibit 2).

11. Deposition of Leslie H. Moore and 15-a, -b, -c, -d, -e, -f, -g, -h, -i, -j and -k: (Packing Slips), (Sub-Exhibit 15 of Pre-Trial Exhibit 2).

12. Makiki Agreement: (Sub-Exhibit 16 of Pre-Trial Exhibit 2).

13. SUP Constitution.

14. Affidavit of William Benz Dated 11-4-52, with Attached SUP Resolution on Picketing.

15. Libel, 6652.

16. Answer, 6652.

17. Findings of Fact and Conclusions of Law, 6652.

18. Decree, 6652.

19. Libel, 6661.

20. Answer, 6661.

21. Findings of Fact and Conclusions of Law, 6661.

22. Decree, 6661.
23. Oral Opinion of October 22, 1952, 6652 and 6661.

"Recapitulation of Chartering Transactions" in Daily Freight Record Issued of

24. October 14, 1952.
25. October 20, 1952.
26. October 27, 1952.
27. November 3, 1952.
28. November 10, 1952.
29. November 17, 1952.
30. November 24, 1952.
31. December 1, 1952.
32. December 8, 1952.
33. December 15, 1952.
34. December 22, 1952.
35. Affidavit of Hans H. W. P. Koster, Dated 11-4-52.
36. Affidavit of Frederick W. Kaiser, Dated 11-4-52.
37. Affidavit of Ronald Davies, Dated 11-4-52.
38. Affidavit of Fritz Minder, Dated 11-4-52.
39. Affidavit of Claus H. Diessel, Dated 11-4-52.
40. Affidavit of Max A. Klunker, Dated 11-4-52.
41. Affidavit of Andrew Hogberg, Dated 11-4-52.
42. Affidavit of Lawrence R. King, Dated 11-4-52.
43. Affidavit of Werner L. Kapels, Dated 11-4-52.
44. Affidavit of Paul Check, Dated 11-4-52.
45. Affidavit of P. Abeysiriwardena, Dated 11-4-52.

46. Affidavit of Nels R. Pederson, Dated 11-4-52.

47. Affidavit of Anthony L. Baardman, Dated 11-4-52.

48. Affidavit of Roy K. Symonds, Dated 11-4-52.

49. Affidavit of Reginald D. Goldsmith, Dated 11-4-52.

50. Affidavit of John B. Peterson, Dated 11-4-52.

51. Transcript of Proceedings, Civil No. 6735.

52. Booklet Entitled "Bylaws of West Coast Local No. 90, National Association of Masters, Mates & Pilots of America, A. F. of L."

53. Booklet Entitled "The National Maritime Board Year Book 1952, Summary of Agreements."

54. Withdrawn.

55. Transcript of Proceedings, Civil No. 6745.

56. Photograph: (Exhibit 1, 6745).

Defendant's Exhibits

75. Photograph: (Exhibit 1, Civil 6652 and 6661).

76. Photograph: (Exhibit 2, Civil 6652 and 6661).

77. Photograph: (Exhibit 3, Civil 6652 and 6661).

78. Photograph: (Exhibit 4, Civil 6652 and 6661).

79. Photograph: (Exhibit 5, Civil 6652 and 6661).

80. Photograph: (Exhibit 6, Civil 6652 and 6661).

82. Crew's "Shangheit" Note to Master.

83. Marine Guide Article.

84. Newspaper Clipping on Crew Trouble in Hawaii.

85. Affidavit of Jeff Morrison.

86. Complaint in Civil 6699.

Dated this 22nd day of March, 1954.

/s/ JOHN D. MOSSER,
Of Attorneys for Plaintiff.

/s/ RICHARD R. CARNEY,
Of Attorneys for Defendants.

[Endorsed]: Filed March 22, 1954.

[Title of District Court and Cause.]

Nos. 6699, 6735 and 6745

STIPULATION FOR USE OF TESTIMONY IN NARRATIVE FORM

It Is Hereby Stipulated and Agreed by and between the parties hereto that either party hereto may, upon appeal to the Court of Appeals, use the Narrative Statement of Testimony which is attached hereto in lieu of the transcripts of proceedings which have been marked as pre-trial exhibits 1, 2, 51 and 55, provided, however, that either party may print in the Record on Appeal any portion of the testimony that has been reduced to narrative

form, in question and answer form, if such party desires so to do at his own expense.

/s/ JOHN D. MOSSER,
Of Attorneys for Plaintiff.

/s/ RICHARD R. CARNEY,
Of Attorneys for Defendant.

United States District Court, District of Oregon

No. Civ. 6699

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

WILLIAM BENZ, and ROBERT WILLIAMS, Etc., Et Al.,

Defendants.

TESTIMONY IN NARRATIVE FORM

JOSEPH JOHNSON

a witness produced on behalf of plaintiff, after being duly sworn, testified as follows:

I am a Master Mariner and have been employed by Compania Naviera Hidalgo, S.A., for about 2½ years. I am not now, but I was formerly, the Master of the Riviera. The company that owns the Riviera was incorporated in Panama. I do not have a list

of their stockholders but I have met the owner, that is, the man that told me he was the owner of the ship. His name is Mr. Nomenger. He is not a Greek, but so far as I am aware he is the owner of the ship. I did earlier testify that a corporation owned the vessel but so far as I am aware it is owned by an individual. I am not sure that it was a stock corporation. When I met one of the owners he told me he was the owner. There may be two or three others for all I know, but I met the owner and he said he was the owner. He was a British subject but he lived in South Africa. So far as I know no American citizen owns any interest in the vessel or in the company.

Cross-Examination

By Mr. Tanner:

I have worked for my present employer on one other ship besides the Riviera. I have been employed about 2½ years. I was employed through the Southern Steamship Company as agents in London. Southern Steamship Company employed me and this company operates other ships and employs men on other ships. They normally operate 8 or 9. These ships are in substantially the same trade as the Riviera. They are not all American built. The Riviera was an American-built ship. I couldn't tell how many of the other 8 or 9 ships were built in America. I would say about 4. The other ship I was employed on was an American-built ship. I couldn't tell whether the owner of the Riviera owned these other ships.

United States District Court, District of Oregon

No. Civ. 6652

H. BERG, Et Al.,

Libelants,

vs.

SS RIVIERA, Her Engines, Tackle and Gear,

Respondent.

No. Civ. 6661

COMPANIA NAVIERA HIDALGO, S.A.,

Libelant,

vs.

SAILORS' UNION OF THE PACIFIC, Et Al.,

Respondents.

TESTIMONY IN NARRATIVE FORM

JOHN PETERSON

a witness called on behalf of libelants, being duly sworn, on Direct Examination by Mr. Carney, testified as follows:

I am the chief cook on the SS Riviera. I signed on in New Orleans in April of 1952, and served the vessel in that capacity until September 9, 1952. The vessel took on very little food provision in New Orleans. I didn't see any American stores on board the ship. The next port of call was Bombay. We stopped over in Gibraltar and Port Said to take on bunkers and water and things like that. We then

(Testimony of John Peterson.)

went through the canal and stopped at Djibouti and from there we went to Bombay. The vessel was in Bombay four weeks. During that time we took on food provisions that was mostly meat. It was very bad meat. It was third class meat, water buffalo. The first meat that came aboard came off the dock and the chief steward said to look out for that meat because they probably didn't want anybody to see, the customs, there wasn't any stamps on it at all. I later prepared the meat for serving. There wasn't any other meat on board the ship and the chief steward ordered me to use that meat. This was while we were lying in Bombay. It was very bad. I would take 80 pounds, throw 40 pounds overboard because it was unusable. You couldn't use it at all. When the vessel reached Portland there was still some on board. At the time the vessel was in Portland I was still being ordered by the chief steward to use it and serve it.

"The Court: Do you mean to say that this was decomposed meat and you were ordered to use it?

"The Witness: Yes.

"The Court: Did you use it?

"The Witness: I used it, yes."

All of the meat got so spoiled you couldn't make anything out of it except stew. The only thing you could do with it was boil it. While the ship was at Bombay they took on 2,000 pounds of frozen meat, a couple of days before we left Bombay. The quality of that meat was the same as the first that we got on board. Most of it was spoiled. I called this to the

(Testimony of John Peterson.)

attention of the chief steward. He instructed me to go ahead and use it. While the ship was in India we took on vegetables. I would not call them vegetables; they were rotten. You couldn't use them. That was in Bombay. I was able to [1*] use some but very little. The chief steward had charge of the lockers where the eggs and butter were stored. I could never get a key. Only the chief steward had a key. He rationed the eggs and butter. He gave me one egg for each of the men, one egg for breakfast, one pound of butter for the deck gang crew in the morning and the engine department he gave them a half a pound of butter and no more. In the deck department there are 11 men and in the engine department there was 6. That was the usual procedure that was followed with respect to butter and eggs on the voyage. We had some cereals but they were fouled up. They were filled up with dirt and everything, you couldn't use it. There was weevil in it. I called that to the attention of the chief steward. He just told me to serve it. Before the vessel arrived in Portland we went up to the chief steward and went up and told the captain that the food was no good. They wanted to pay off in case he couldn't give them better food. This occurred about four days before we got to Portland. One of the men was Kratky. He was the one that later committed suicide. He was complaining about the food. Everyone complained about it. I never saw fresh milk aboard the ship and I have been on the

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

(Testimony of John Peterson.)

ship since April, 1952. Condensed sweet milk was served on the ship. Each man got a can a week. Then in the morning I got a can to use for 32 men. To use it I had to mix it up with water, about six or seven gallons of water and that one can of milk. The can was about the size of a pound, or less. I would mix that with a number of gallons of water about six or seven gallons. That is what I served to the crew for milk. For their cereal in the morning; when they had dry cereal they would put it over the dry cereal. When the vessel arrived in Portland there were provisions brought aboard consisting of some vegetables that we got the first day we were in port; then there was a case of eggs and a case of fresh fruit, some fruit juice and a few vegetables. This is what is called port stores. They were to be used while the ship was in port. The ship was supposed to be in port until the 12th of September. It arrived in Portland September 3. [2]

On Interrogatories Propounded by the Court the Witness Testified:

The officers ate in the salon. They ate the same food except the cereals. The officers always had cornflakes and things like that. The crew had oatmeal and the cornflakes that came aboard out in India. The meat was taken out of the locker. It was served to the officers and the crew. The officers did not get the same portions of butter and eggs as the crew got. Every morning I divided two pounds

(Testimony of John Peterson.)

of butter. Four cans of milk went to the officers every morning and in the night time the officers had another can of sweet condensed milk and sandwiches and things like that for the night. The crew did not get any food at night. When the ship arrived in Portland they took on some port stores. There was a requisition made for additional stores for going out to sea. I saw the requisition before it went to the ship's chandler. The chief steward called me up one day and asked what kind of stores we would need and I told him. There were many things I asked for and he said "We can't ask it. We won't get it." There were 300 pounds of beef ordered. For the size of the crew that we were feeding on the vessel that would last about 20 days. The ship was getting ready to go to India. The last time we went out from New Orleans it took 42 days. It would probably take the same for going out there from Portland. I checked the quantity of vegetables that were ordered on the list that the chief steward prepared. There was very little that he ordered. It was not enough. It would have been enough for about 10 days out at sea and we would have been running out. It was only about 10 days' supply. I did not see anything on the order such as ham or bacon. Some things like that were served aboard the vessel in India but it was very bad. I complained about it to the chief steward and he said he just couldn't get any more, that was all. He was proud of the list that he had made up while in Portland. We were still obliged while the vessel

(Testimony of John Peterson.)

was in Portland to use some of the beef and meat and other products that were picked up in Bombay. We were still feeding from those supplies while in Portland and I was ordered to do it by the chief steward. I have served on Liberty ships before as chief cook and [3] have been going to sea about six years as a chief cook. Libelant's Exhibit 1 is a photograph which represents one of the refrigerator compartments on the SS Riviera. That is the way the compartment looked on September 9 at the time I ceased working on the vessel. The exhibit shows a refrigerator fish box. That is where they put the meat. There is another room for meat but that is where we kept it about that time. There was other meat on the vessel at that time hanging in the other room. The meat shown in that photograph is water buffalo from India. That is the way it was usually stored in the compartment. The photograph was taken on the 11th but it is a correct representation of how the meat looked on the 9th. Exhibit 3 is a photograph of the oven where we put the bread before we could bake it. It would stay for half an hour and then the last thing down there on the bottom line is where we used to put it to bake it. It is a steam oven. There were utensils aboard the vessel for working in the galley. They are shown in the photograph. They are all rusty. The pans were rusty, too. None of them have been replaced prior to the time I ceased working on the vessel. I requested the chief steward to get some new ones but we didn't get it. The condition of the oven was very

(Testimony of John Peterson.)

bad. It was rusty all over. Exhibits 1 and 3 were received in evidence. While preparing the food in the pans rust and foreign matter would get in the food. There was plenty of rust that came all the time in the soup, things I was cooking, bread, everything, stuff like that on the outside. That happened every time I used it. Exhibit No. 6 is a photograph of the galley stove and the rest of the things that you have to use for cooking. That is the way it looked on September 9 and it looked that way on September 11 when the steward department went out on strike. There was rust on the wall overhead near the stove and it was fouled up with grease. The funnel was leaking, running oil and dust and everything was coming down. This is supposed to be a ventilator but it doesn't work. There was rust and foreign material on the wall that fell down on the food. [4] The condition shown on the photograph around the stove was like that since I came aboard. It had been called to the attention of the chief steward but no arrangements had been made to repair the conditions. The ventilators never worked ever since I came on the vessel. The meat that was prepared for the crew was served to the officers but, the officers were served other food in addition. Every day they got crackers and bread and for their dinner they could get bread and crackers and cheese and preserves. Those items were not served to the crew.

Exhibit 6 was received in evidence.

(Testimony of John Peterson.)

On Cross-Examination by Mr. Krause the Witness Testified as Follows:

I am 22 years of age and of Danish nationality. I hold a cook's license. I received the license from another chief cook. That is the way you do it in Denmark. It is a license to serve as chief cook. I get the license through the Danish and Norwegian Union. I belong to the Danish and Norwegian Chief Cooks and Stewards Union. I have gone to sea six years. I sailed as chief cook on the Nielsen, Hardes, Triumph, Hallberg, Riviera, and the Danish school ship, the schooling ship we got there. I was not chief cook on the training ship, I was learning there, but was chief cook on the Riviera and the other ships named. I ate the food that I cooked. There was nothing else to eat. Some of the crew became ill as the result of eating the food. They were always complaining that they were sick. The principal thing that a crew does on every voyage is to complain, but not the way it was on board this ship. All of the men became ill as a result of eating the food on the ship. Many of them were able to perform their duties. The bosun was one that was sick. There was one day we had some hash on board the ship and that was made from the India beef. I know he got sick in bed. Some of them didn't have to go to bed but they were feeling ill, very ill. The weevil were in the packages of oatmeal. The packages were sealed when they came aboard but they were

(Testimony of John Peterson.)

all lying on the shelf in the store room for a time when I got aboard. The cockroaches go through the packages. They would open some of the packages. You could see them going through. There were plenty of holes in the packages. [5] The holes got there from the cockroaches. Probably that is the way the weevils got there. The packages were so old lying on the shelf for years I believe. They looked that way. They carry too large a supply of things like that because they could buy them cheaper in Germany I believe. The oatmeal was regular Quaker Oats. The only way they could be opened would be to have some member of the crew open them or for the cockroaches to dig a hole in them. The weevils are small things, white and black, some are black and some are white. I believe they have legs but I don't know how many legs they have. I never examined them. A weevil is a worm and I don't know that worms have legs. I have been on ships where there are no cockroaches. I have been on ships where there are cockroaches and they do something about them to get rid of them. The Triumph, and the Elsa Nielsen are ships I was on and on which I never saw a cockroach. The meat that was loaded in Bombay was water buffalo because the ship's chandler told me so. I asked him. And I could see the meat. I can tell water buffalo from other cuts of beef and I could see that this beef that we loaded in India was not real beef at all. The beef that we took on at Singapore was Australian beef. I was not allowed to use the Singapore beef during the

(Testimony of John Peterson.)

voyage. There was 500 pounds still aboard when we arrived here in Portland. The water buffalo had been loaded earlier. It was loaded at Bombay. I did not know the kind of articles that I signed on the ship. We signed some articles. I know the only thing we signed was something about how much wages we were to receive and—and what we were going to do aboard ship. The captain said they were British articles at the time I signed on. I do not know what British articles provide with respect to the food that is provided in the articles or what the articles provide as to the food that the crew was to receive. On Danish and Norwegian ships they have to have good food served aboard, plenty of it, and there is no rationing of food on board those ships. On those ships they do not provide how much meat the crew is to receive and how many eggs per day or per week or other things of that sort. I have sailed as chief cook on those ships. I did not know that the British articles provide for the feeding of the crew. I made a complaint to the steward that the men didn't get enough eggs. The [6] men complained to me that they didn't have enough eggs served to them but they did have one egg a day. While the ship was in Indian waters the eggs that were served were so rotten that we couldn't eat them. They were so small that we had to serve them two. They were bad. No one forced them to eat the eggs but they could not go around hungry every day. I did not serve all the men could eat of mush, boiled meat and things of that sort. We were

(Testimony of John Peterson.)

limited. The chief steward told me to do it. I couldn't tell you exactly how much he told me to serve. If I had the pots I could tell you the amount. He told me how much mush to cook. There wasn't much used. I didn't have mush left over after the meals were served. All the mush I boiled in the morning was used. Very seldom was there something left over. When it was, it was used later for food in the hash in the morning and things like that. The only thing they could get as much of as they wanted was potatoes. As to the meat I was only allowed to use that much meat for every meal. The chief steward would see the meat I took out and he would say "That will be all right." He was with me when I went to the locker to get it. We would take out about 10 or 15 pounds for each meal. There were about 30, 31 or 32 men. We did not actually weigh it. When I would take out 80 pounds of meat I would throw 40 pounds overboard. You could eat what was left and I served it. We had to. The chief steward would object once in a while to throwing meat overboard that I thought wasn't fit to use but I did throw overboard what I thought was unfit. We came into Portland on September 3 and some port stores were immediately brought aboard. Three hundred pounds of meat did not come aboard at that time. That was going to come aboard the day we were going to leave. No meat came aboard while I was there. There were still 500 pounds of Australian beef aboard and there was some India beef

(Testimony of John Peterson.)

aboard, too. We sure needed some fresh meat to cook for the crew instead of using that old water buffalo. They wouldn't allow any beef to be used except the water buffalo. We could have discarded the water buffalo and used the Australian beef but we weren't allowed to do it. The chief steward told me [7] not to use the good beef.

On Interrogatories Propounded by the Court the Witness Testified:

A great portion of the water buffalo was infected meat. I would trim it and throw about half of it overboard each time we used any of it. Some of the meat that I served was infected but we had to use it. And I ate part of it.

Recross-Examination Resumed by Mr. Krause:

Beef that has been hanging in a refrigerator for a long period of time always has to be trimmed some before it is served but not that much. And the longer it has been hanging in the refrigerator the more it is trimmed. We trimmed more of this meat than was ordinarily done and I did it from the first day the beef came aboard in India. I did not join the strike until the 11th of September. Some of the crew went on strike on the 9th. We were still cooking. I served nothing to the crew that went on strike after 12 o'clock on the 9th. We still kept serving the officers, but we couldn't do it the 11th because there was no steam so we could not light

(Testimony of John Peterson.)

the galley. Between the 9th and the 11th my cooking was handicapped because there was no steam coming up. The engine crew was on strike. I couldn't do much serving on the 10th and the 11th. I joined the strike to better conditions. We were talking with our own men in the crew about it. We did not talk to men from the shore about the strike. The talk was all amongst ourselves. Later on after the strike I signed a blue card to the Sailors' Union of the Pacific. It was five days after the 11th. I don't know who has the card now. Mr. Kaiser, our spokesman, gave me the card. Up to that time I had not talked to anyone from the shore nor to anyone from the ship that was lying aside of us. I did not meet any of the members of the crew of the Cotton State. I was not up at 3 a.m., on September 8. I heard something about it but it was just hearsay. I know nothing about it personally. Everybody was talking about it. Mr. Kaiser did not tell me that he was at that 3 a.m. meeting. It was the chief steward that told me that he got called up in the morning about that time. That is how I learned about it. Nobody came to wake me up. [8]

I had to buy the supplies for the ship for the voyage that we were contemplating. I have been making stores and lists out for Liberty ships. Under the Danish law you are supposed to store a ship for three months. The way we store a ship with meat and things like that is to take on about 1,500 pounds for three months. That is the way we usually store for vessels with the same number of crew. I did not

(Testimony of John Peterson.)

think the Riviera was a Danish ship. I knew she was not. What I have been talking about is under Danish law. We would use about 500 pounds a month. The 1,500 pounds which I have referred to would be all kinds of raw meats, but not cold meats and things like that, and it wouldn't include ham or bacon. We would need 50 to 60 pounds of bacon a month and about 100 pounds of ham. We would need about 50 or 60 pounds of sausage and cold meats per month. There was an unlimited supply of potatoes and there was plenty of flour but there were weevils in the flour. The flour was in sacks. Once in a while there has been weevils in flour on ships I have been on but then we threw the flour out. There were some vegetables aboard, there was some the chief steward ordered. We had canned vegetables aboard and they were served when we needed them but we had to almost fall down on our knees to get them from the chief steward. It was hard to get them. But there were still canned vegetables aboard when the ship came into port. I would say that you could find maybe 10 cans and maybe more, maybe a case, but not more than that of canned vegetables. We did not carry fresh bread away with us from Bombay. We did not have fresh bread when we arrived at Bombay. We had been baking bread ourselves. We took bread aboard in Calcutta but not in Bombay. I don't know how many; about 8 or 10 loaves every day in the morning. We didn't have enough to carry us over to Singapore. We ran out of it a couple of days before we got there. The

(Testimony of John Peterson.)

fresh bread would eventually begin to mold and spoil but you can carry American bread because it is in paper packages for about two months and nothing will happen to it if you keep it in a cool place. That bread is wrapped in celophane paper. The bread we got in Calcutta was not wrapped that way. We did not take on bread in Singapore. From Singapore back to the United States we baked our own bread. [9] There were some supplies taken on in the steward's department at Singapore after the meat was taken on. There were potatoes and vegetables and some fruit, too, but very little. The vessel served coffee and we had coffee and tea all through the voyage. I believe the pans in the kitchen that got rusted are made of iron. The kitchen staff was supposed to keep them free from rust but we could not keep anything free of rust that was fouled with the rust when we came aboard. We could not keep the rust off because the pots were not good pots. There is a big difference between the rust that you take off the side of a ship before you paint it and a pot. You can't paint a pot. You could scrape the rust off but there would still be some. We tried to scrape it off but you couldn't get it off. After the crew quit work we worked 10 hours up until the 11th of September. On the 11th there were only me and the galley boy working when we quit. We quit about 10 or 11 o'clock. The second cook and the mess boy had quit before that. They had gone on strike with the crew. I and the galley boy continued

(Testimony of John Peterson.)

on duty until the 11th at about 11 o'clock when we walked off. The rest of the galley crew began their strike when the rest of the crew started it. There were only two of us after the 9th, and after the 9th the galley was closed. We did not work on the galley. I swept out the room in which I was living. I don't know if the members of the crew were expected to keep their own quarters clean and swept out. The mess boys are the servants that do the cleaning work on the ship. The galley boy is supposed to clean my room. I was not apt (asked?) to keep my own room clean. The galley boy has to make my bed if I want him to. If I don't I do it myself. He never made the bed for me. He cleaned my room once in a while. The mess boys were supposed to keep the rooms clean for the engine room and deck crews. We did not have mess boys aboard the ship. We were short of crew all the time aboard ship. While I was aboard there was our mess boy and there was an ordinary seaman working in the mess. He was working both in the crew mess and in the engine room. The ordinary seaman was performing the duties of mess boy in the engine room department and the deck department. The engine room crew and [10] the deck crew eat in different rooms. Ordinarily mess boys are supposed to clean the rooms for the seamen and for the engine room crew and I believe the ordinary is supposed to do that as well. I couldn't tell you if seamen are supposed to make their beds and sweep out their own rooms. From what I know the mess boy is supposed to do

that work but I am not the chief steward on board the ship. The chief steward should take care of that. I am only the chief cook working in the galley. It is the galley boy's job to keep the galley clean. He couldn't keep it any cleaner because of the rust that was in it. He couldn't get rid of the rust, but otherwise he kept it as clean as he could. I am complaining about the rust and because there was not enough equipment for the galley. There should have been more pots and pans and I have been asking for them since I came aboard. That was one of the first questions I asked when I came aboard, but we thought we could make it anyway. But it makes more work because we have less pots. When you make soup and potatoes and have to boil your potatoes in the same pot, it is hard. We had to make soup and potatoes and boil beef in the same pot. We would make the soup first and then I would make the stew and the potatoes or the meat and when the meat was stewed I would put in the potatoes or whatever was left first until we get to make the dessert, that is the pudding and things like that in the same pot. We had about three pots but still you have to have something stewing on the stove all the time, but we made out with the pots that we had.

On Redirect Examination by Mr. Carney the Witness Testified:

I signed articles on the Riviera. When I came aboard the 16th I talked with the captain and he saw my papers, and then after we left I didn't sign

(Testimony of John Peterson.)

anything that day but I started working in the afternoon and on the 23rd after we had been out six days at sea I signed the articles at that time. After I signed the articles I had been on the ship 7 days. The articles were not posted any place on the vessel nor any place in the passageways. On our way over from India to Portland and while in Singapore we picked up [11] some vegetables and some potatoes. They were not of very good quality and only lasted until about seven days before we reached Portland. There was quite a bit of spoilage among the food that we picked up in Singapore. Most of the carrots and things like that went overboard. The potatoes that we picked up as Singapore were not very good. We had some aboard the ship when we arrived in Portland. You can cook them but they are not very good. When you peel the potatoes you have to take about half an inch off before you can start using them.

On Recross-Examination by Mr. Krause the Witness Testified:

When I saw the captain I asked him where the ship was going and he told me that we were going to India. The ship was loading grain all the time and I knew where we were going. He didn't tell me where it was going from India. And he didn't tell me how long the voyage would last. I was willing to sign for an indefinite voyage. I remember the affidavit which I signed in the state court case and in the affidavit I said the only provisions that were

(Testimony of John Peterson.)

procured in Portland was a small amount of potatoes and some fresh bread. I don't call chicken that came aboard meat. I can't say that the 50 pounds of chicken that came aboard was meat. There was a case of eggs that came aboard. Maybe I said in the state court that there was nothing except tomatoes and some fresh fruit. Tomatoes are one kind of vegetable but I now say that other vegetables came aboard and there was grape fruit. I do not think grapefruit is a vegetable. I believe there was some canned milk came aboard because there wasn't any milk aboard the ship.

On Interrogatories Propounded by the Court the Witness Testified:

With respect to the flour that was on board that was infested with weevils, we had to take that through a strainer first but that strainer was not fine enough to take the weevils out of it so we started using it. Ordinarily the custom with reference to flour that is infested with weevils is to throw it overboard. With respect to the cereals that were infested with weevils, we let them lay in water the whole night so all the weevils would come up to the top overnight and we had to pick them off. There would still be some left [12] but we were using it. On other ships the practice is to throw it overboard. It would not be used at all. You find weevil-infested flour and cereal once in a while but never as much as on board this ship. In addition to the water

(Testimony of John Peterson.)

buffalo that we took on at Bombay there was 500 pounds of Australian beef, but I didn't use that Australian beef during the whole entire trip. There was no other meat aboard at that time. After we left Bombay there was no meat that we had picked up in the United States. We ran out of meat on the day when we took on the meat in Bombay. Later on we took on some Australian beef but we never used it. Even after we came into Portland it was not used. I told the steward that the meat we were eating was infested but the men were willing to eat it. The men complained many times about an insufficient amount of butter. We got one pound in the morning for the crew of 11 men that were sitting at the sailors' mess and half a pound for the six men in the engine room mess. That was to last for the whole day. I never saw any margarine aboard the ship. With respect to the meat that I said was infested, I would say that it was rotten. You could not use it. I can't say what was wrong; it was just that you had to cut off a piece that was smelling. There was green in the meat and there was white stuff on it, just like it was kept too long. On other ships you never see that except where you keep a piece of meat outside for about a week, something like that, and then it would start to get that way. We hang meat out for maybe two or three days, but never a week. In spite of the spoilage the chief steward prevented me from using the 500 pounds of Australian beef which was hanging in the meat room. I could go in and get it, but I wasn't allowed to. In the morning the steward gave me the key;

(Testimony of John Peterson.)

he gave me a pound of cereal or of oatmeal to cook up for them, and in case of corn flakes he gave me a tin of milk and I got to mix that up with six or seven gallons of water. I know what a gallon is but I don't know how many quarts. I can tell you what it was in Danish counting but you would not understand it. We use the litre system. It goes 3 litres to the gallon. There were about between 18 and 21 litres. It would color the milk which was thick and sweetened milk. [13]

On Recross-Examination by Mr. Krause the Witness Testified:

I gave out to the crew six or seven gallons of watered milk and each man got a pint of condensed milk per week. There were 11 men in the deck gang and that would be 11 pints of milk. They got one tin of milk a week for each man. On top of that one tin of milk every day for the galley for use for the crew. The crew got that tin of milk. I don't know what they did with it. They put it in their coffee or something like that. I didn't get it. In addition to what the crew got I got some from the chief steward which I had to thin down. I used one can each morning for the mush for the entire crew. It made up about six gallons of watery milk that they used for their mush, the 30 men. The officers did not get the same kind of milk for their mush. You would have to ask the steward about that; that is none of my business what the officers got, but I know one

(Testimony of John Peterson.)

thing—that they had three or four cans of milk in the morning and they got it in evaporated milk and they got it put on the table there and they used that for the cereal, but that never came from the galley. There were about 22 men that used this six or seven gallons of watery milk for their mush. It was thin; watery milk that I am telling you about. It would be 18 or 21 litres. They had that each morning. They had about three-quarters of a litre each morning on their mush. I had to thin it down or else there would not be enough. [14]

MARK A. CHAMBERLAIN

a witness produced on behalf of libelants, being duly sworn, testified on Direct Examination by Mr. Carney as follows:

I am a resident of Gresham, Oregon, and have personally been aboard the SS Riviera. The first occasion was September 10. I had heard something of the conditions on board from men that I knew who called it to my attention and I went down to the ship to see Captain Cowden and a representative of the company. While I was there I made a tour of the living quarters where the seamen live. I saw the refrigerator space on the ship. I recognize the photograph, Exhibit 6. It represents the meat cooler with some quarters of meat there. It looks as though it might be the one I viewed on September 10. I would say it is an accurate representation of what I

(Testimony of Mark A. Chamberlain.)

saw on the SS Riviera. With respect to the meat in the refrigerator locker I observed some of the hind quarters of good beef they said had come from Australia. I think there were three there and there were quarters of other beef hanging back of those which had little or no covering on. It was very bad. I put my hands on it and it felt slimy. There were dark patches on the edges of the meat which to me indicated the meat was not good for human consumption. The general odor was not good but I would not say about these particular quarters of beef. There was a general odor in that refrigerator compartment. The box was fairly cold. I don't know what the temperature was but it was colder than the other locker through which we had just come, the food locker. I recognize Exhibit No. 2. It looks like some of the rooms of the men aboard the SS Riviera, some of the cabins. The room in the photograph is typical of the ones I went in there. With respect to the walls of the rooms and their conditions I would say the painting in most cases was not too bad. I did not notice the rust. There was rust on the bed railings. The picture shows the condition of some of the bunks on the ship that we visited, not all of them. The mattresses were very poor. They were quite badly soiled. Some of them carried rust on them and some of them had been opened some.

Exhibits 2 and 6 were received in evidence.

One of the lavatories was stopped up at the time I was there. The seat was off. There was a very bad

(Testimony of Mark A. Chamberlain.)

odor in that particular lavatory. I was in one lavatory that was in working condition. With respect to the bathing facilities and lavatory facilities of the crew I don't think they were very good. There was certainly evidence of lack of upkeep all through the vessel the day I was on it, which was on the 10th. A good share of the condition could have been taken care of with some good cleaning by the men themselves. There was so much rust that in some cases the steel and iron metal parts were broken away in some cases. Parts of the vessel, I noticed it. I didn't notice that in the quarters. There were pieces of metal on board the ship where I noticed in particular that had rusted through so much that there were holes right through the metal part. Now there was a condition of rust all over the vessel which seemed to indicate to me something that was very bad about the condition of the ship.

On Cross-Examination by Mr. Krause Reverend Chamberlain testified as follows:

I have been on other ships but not to go through the quarters as I did on this case. I have not made a voyage on ocean-going vessels. I have been aboard them here in port. One was a freighter and the other was a passenger boat which I went aboard before going aboard the Riviera. I do not claim to have any special knowledge as to what shape a ship should be kept in. The photograph is typical of some of the rooms. I saw two rooms that were in very

(Testimony of Mark A. Chamberlain.)

good order, one of the officers' cabins that I was in when I went on later. I went into one of the rooms of one of the men who were not striking. His room was clean and in good order. The rooms of the strikers were disorderly and dirty. The strike was in existence at the time I went aboard the vessel. I saw and talked to the young man that was in the witness chair just ahead of me. I talked to him on board the boat on September 10. He said the food was all right and he is the same one who testified a while ago. I was interested when I went down there in finding out what the conditions were. I have had experience in connection with ascertaining the grade or condition of meats other than just in household. I was a locker operator in Gladstone, Oregon, for three years. It was a cold storage locker and it had a frozen locker department. I handled meats in the refrigerator there. The only training I have had in the grading of beef is what I had in experience in my locker as I bought and sold meat. I have never been an inspector of meats.

On Interrogatories Propounded by the Court the Witness Testified:

Except for the Australian beef it looked almost like wild meat. It was very dark red, parts of it, and otherwise the edges were quite brown and where the sacks were off you could feel the sliminess of the meat as we would term the condition of having

(Testimony of Mark A. Chamberlain.)

whiskers. It had little or no covering of fat and it was meat that could not hang in a locker or in a cool place too long without becoming to my way of thinking bad for human consumption. You would have to trim a portion of it away to use it. If you put meat in a freezing compartment and then put it in a locker, there is a breakdown of the cells. I think that causes it to deteriorate more rapidly. The locker I was in where I saw the meat was not in a locker of freezing temperature. I should judge the temperature to have been possibly around 45 degrees. I would not be too good at estimating it. I do not think the ship's engines were operating when I was aboard the ship. Some of the meat I saw in the locker was lying on the floor and some was hanging. I didn't see the quarters that were in the photograph lying on the floor at that time. Some smaller pieces than quarters were lying on the floor. As I remember the quarters were all hanging. I would not be too sure. I felt of the lower grade of meat and it was not frozen. None I saw that day was solidly frozen. Some people let beef in order to get the choicest steaks hang until it gets what we call whiskers and then trim off the outside parts. Then the inside is ordinarily edible even though the outside had whiskers. It is the outer portions that are exposed to the air that deteriorates first. If it hangs long enough a beef will turn black just from the exhaustion of the moisture in the end pieces. Meat will turn black if it hangs long enough just from the fact of the moisture being drawn out of it. Some of this meat looked black and I said it was not

(Testimony of Mark A. Chamberlain.)

fit for human consumption because that is not the type of meat that I would ever want to sell myself in the business. I didn't like that kind of meat for human consumption. It was not good for human consumption, as I saw it, as it appeared to me. There was other beef that I saw there that was all right. I didn't examine it too closely.

On Redirect Examination by Mr. Carney the Witness Testified:

Some of the meat that I touched I described as being soft and discolored, and as having an odor. I would say it was spoiled. If you have a large measure of meat sometimes you can save a part of it on the inside, but you have to trim away all that outside and it certainly is not the kind of meat that would be put on the market it seems to me for human consumption.

On Recross-Examination by Mr. Krause the Witness Testified:

I did not smell the meat itself but the odor in the refrigerator was not good. The quarters that I saw did not smell a bad odor as though it was all decayed, or anything of that sort.

FREDERICK W. KAISER

a witness produced on behalf of libelants, having been duly sworn, on Direct Examination by Mr. Carney testified as follows:

I am a seaman in the engine room service of the SS Riviera and have been going to sea since 1937. I have sailed on a number of vessels which belonged to the Krupp Company. One of these vessels was the Rotterdam Zion. After the war I have been on Panamanian ships belonging to the Socony-Vacuum Oil Company in New York. I am 32 years old. I served on the SS Riviera as an oiler and was engaged in Bremen, Germany, March 19, 1952, and have been in the service of the ship from that time up until it reached Portland in September. I was the ship's delegate. That is not an official position. I speak for the crew. The master of the vessel speaks English but he does not speak German. There are about 16 or 17 of the crew who speak German and only speak a few words of English. There is one member of the crew who speaks Danish. He understands a few words of English but not much. He is the bosun, Peterson. I speak both English and German. I was elected by the crew after the vessel left New Orleans. I would often speak to the captain when some of the crew wanted me to about things that would come up on board the vessel. There had been complaints by members of the crew with respect to the food that was being served on the vessel prior to the time it reached Portland. I went to the captain on behalf of the

(Testimony of Frederick W. Kaiser.)

crew with respect to food and living conditions on the vessel at sea and at Portland. It was about the first of September. Kratky came to me and said, "I feel so sick. I can't stand it." He wanted to sign off the articles and said that if he stayed longer he would die aboard the ship.

I went to the chief steward and spoke to him about the food a few times. I can't remember all the days. A few times after leaving Bremen I spoke about the food rations that we haven't any meal or any butter or any sausage for the night watch in the nighttime. I have been asking the chief steward for more bread, more butter and sausage for the nighttime and he refused to find anything. With respect to the meat that was being served aboard the vessel I told the steward sometimes it is not good, that the meat was stinking. I show him that sometimes and in the galley he said "We don't have another." I told the cook. I made a complaint to the chief steward in respect to cereals that were being served. I told that mostly to the chief cook. I told him that we could not use the meat and he said "I don't have another. You have to eat it." I have made complaints to the master with respect to living conditions on the vessel, the fixtures and rooms and other places where the crew lives but I don't remember the dates. I was speaking with the master about many things, about living conditions and about money. We had an appointment with the consulate general in Bombay because the master was refusing to pay people in Bombay. I spoke to the

(Testimony of Frederick W. Kaiser.)

master concerning the lifeboats and their condition on board the ship before the vessel came into Portland. He did not promise to do anything with respect to repairing the lifeboats. We told the captain that the lifeboats must be overhauled but he said that would be done later on. I know what was wrong with the lifeboats. I do not recall what in particular I told the captain was wrong with the boats. I told the captain that and the captain said "That is not your business. You stay in the engine room. You don't know anything about that." On September 9 I had been sick. I got in an accident on September 6 and on September 9 I was lying in my bed in my room. I could not go upstairs to tell the captain some of the things that had happened about the strike but since September 12 I was back and was doing my job as spokesman for the crew. I sent a note to the master on September 9 with respect to quitting. I signed the list that all the crew went on strike. I couldn't bring it up to him. Two other guys went upstairs. I couldn't. I lay on my back. The reason that I and other members of the crew quit work on that watch was only living conditions and the food. We refused to work under the same living conditions and under the same conditions of the food. With respect to the living quarters we did not have a mess boy to clean up the mess room and some of this must be done by ourselves, the rooms and halls, and we asked the chief engineer for a wiper. We wanted a wiper aboard the ship to make it clean. The mattresses and the sheets had not been cleaned. The blankets have not

(Testimony of Frederick W. Kaiser.)

been good. The blankets had been used before by all the crew and in the tropics you sweat more and if you have been sleeping in your bed it is wet. There was nothing done about the mattresses. They were very terrible. You could come in and keep the room clean, but the mattresses you could not clean. The pipes in the toilet had been rusty and were leaking; in the crew's mess in the engine department's mess there was an ice box that you couldn't use. The chief engineer refused to repair the ice box. We couldn't keep our butter in the ice box and we had to brush it on our bread, you couldn't use a knife.

Exhibit No. 4 is a photograph of the toilet and shower room for the deck department. That is the way it looked at about the time the crew went on strike. With reference to the radiator, it was rusty. There was no paint aboard the ship to fix it up.

Exhibit 4 received in evidence. Exhibit No. 5 is a photograph of the toilet for the deck department on after deck. There were defects in the toilet. There was water running from it. That was the way the condition was when we went out on strike on the 9th. I cannot say how long it had been that way. The pipe was rusted and broken and leaking. I cannot remember how long it had been leaking. It was a considerable time before the vessel came to Portland.

"The Court: I just want to tell you, Mr. Carney, this witness is painting a much worse picture at this trial than he did a week ago. His testimony was not

(Testimony of Frederick W. Kaiser.)

anywhere near as strong as it is today when he was asked about the condition of that ship."

Mr. Tanner: He is describing the photographs now, your Honor.

Exhibit No. 5 received in evidence.

I signed on the ship at Bremen and I was on the vessel when it was in New Orleans. During all the time I was on the vessel we only had one fire drill. But it was not a drill. It was only the bell ringing and everybody was in his place but nothing was drilled, no pressure on the fire hoses. The captain then said, "Well, the fire equipment would not work." There was a lifeboat drill held I think about five times but the boat was not put over the side. It never did go down to the water. The drill consisted of standing near the lifeboats with our life jackets. They try to show that the davits were working to lift a boat about 5 feet high and put it a little on the side and put it back again. That was only one boat that we did that to, not all four. There are four lifeboats on the vessel. The boat we moved was the forward boat on the starboard side, and once the after starboard boat. The boats were never swung out and lowered. There were not sufficient men for a galley boy to take care of the rooms. I have never sailed before on Liberty ships. In our engine room department there are three donkey greasers, two oilers, there are three firemen, three engineers. There are ten, including the engineer and the chief engineer and sometimes there are eleven men. Later on 7 to 8. Sometimes they change. The people get sick

(Testimony of Frederick W. Kaiser.)

and some jump ship. It is not always the same number but between 7 and 8 besides the officers. There would be two men on each watch, one oiler and one fireman. There are three watches a day. If we have 7 men one man will be on day work to do repair jobs aboard the ship, clean filters on water tanks and make repairs like packing. He would be on day work.

On Cross-Examination by Mr. Krause the Witness Testified:

I was assigned to lifeboat No. 4. It is on the port side. The only boat that was raised was the starboard boat. The No. 4 boat that I was assigned to was never swung out and nothing else was done on it. I saw them swing the No. 1 boat out. When I say swung out I mean it was only a few feet in height, it was not swung out overboard and then down. That was never done. They only lift it a little bit and put it back again. That was all. The davits were never swung out. You swing the davits only to get the boat a few feet from the bottom. It was never swung out. To raise the boat off the deck you use a block and tackle that holds the boat and you raise it by hauling on the tackle. We turned the screw only to put the boat a few feet in height but never to swing it out. Never did it go down. It was on deck all the time. You have to turn the wheel on the davit in order to raise the boat off the deck. For myself I haven't turned the handle there. It was

(Testimony of Frederick W. Kaiser.)

not my boat and I don't know how fast you must turn it. The lifeboat hangs on the upper deck. I cannot say exactly how you swing them in and out. I only saw the handle of the boat. They raise it by the handle. I saw them work the handles and they worked it up a distance of about 10 meters. That is all. At the time I was standing at No. 4. They had been working on the bottom boat. The crew stay on one side only you know and I could see what they did. That is only about 10 steps from the handle and I saw that they were trying to put that boat up. The lifeboats had been very rusty and the tanks have not been good. I have looked at the tanks myself. I think the best one for you to ask would be the bosun. That was his job. I did not look at the tanks. I know about the boats. I looked in the boats myself and I saw they are rusty and dirty but as to what happened with the boats in all particular details it is best to ask the bosun. It was his job and he can tell you. The lifeboats had canvas covers on them, and they were lashed down. I did not take the canvas covers off but when the chief cook got in the galley one time to use it there, it was dirty and rusty and he showed me that. He showed me one water tank in the lifeboat what he had to use in the kitchen, in the galley. That was very dirty and rusty inside. It was a tank that was not being used in the lifeboat. I saw the lifeboats midship and I saw what was dirty and rusty but I made no real inspection. The only inspection I made was that I

(Testimony of Frederick W. Kaiser.)

saw a lifeboat that had the cover off and I looked into it and it was dirty and rusty.

The mattresses were dirty. I never did lie on them with my boots on. I was in pajamas like you. I don't know whether any of the other members of the crew would lay on their mattresses with their boots on. I have not been around the ship to look at people but they come from parents like most other people and they like to stay in a clean bed and anybody who likes that doesn't go to bed with his boots on. I never saw any members of the crew fully dressed with their boots on in bed. I was with Rev. Chamberlain when he went through the rooms. The captain was there and refused to go with him and he told me that is not your job and I was supposed to go back to my room. I didn't see them lying on the beds with their boots on while Rev. Chamberlain was inspecting. I do not know when the mattresses were placed aboard the vessel or how long they have been in use. I came aboard the ship March 19. About their condition I think they are old. I can't say exactly how old they are. I was not aboard the ship before March 19. I don't know about the trips the ship had taken. When you use the mattresses in the winter time and when you use them in the tropics it is different. I can't say how old they are or how long they are in use. That is not my business. My mattress was old like the ship. Maybe about 10 years. I held a license so that I could serve as an officer on a ship and I have a license as Junior Third Engineer. I think I know my job as well as you know

(Testimony of Frederick W. Kaiser.)

yours. I was complaining about the fire drills on the ship. The fire drills were wrong. The fire equipment was not proved. The fire hose, the steam either, nothing was proved. The only thing was done, the men would have to stay in their places but the whole equipment was never proved. I don't know exactly my position during the fire drill. We didn't have any real drills, the last one is now five months ago. I don't know my position in case of a fire. We didn't have enough fire drills aboard the ship. The places were posted all over the vessel, the positions of the men for fire drill and for boat drill but if you don't have the dril. you can't remember 7 months the place you have to stay if you have a fire drill. There were drill notices posted on the ship saying where the men were supposed to be but it was changed in nearly all the months. They were posted where you should be for boat drills but it was four times in another place where I had to stay. I don't remember exactly where I have to stay. There were changes made for the positions of some of the men. The changed positions were posted but they were not drilled on their positions. I am not complaining about my room not being kept clean. I could make my bed myself. I asked for the wiper to clean my room but not every room. I want him to clean the mess room and wash the dishes. But not to clean the room I was living in. The complaint I made was for the mess room. There was only an ordinary seaman aboard the ship. He was supposed to wash the dishes in the engine room department and work

(Testimony of Frederick W. Kaiser.)

aboard the ship, too. He was a very young boy. I think about 15 years old and he couldn't be everywhere. The chief cook would know more about the duties of this ordinary seaman that was assigned to mess duty. The bosun would know more about the duties. He could tell you that exactly. The first request for additional food I made was for bread and butter and sausage for nighttime lunches. Then we made another request for meat that was fit for human consumption. But the meat we had was not good enough for human consumption. I would not feed it to my dog. We didn't always have on board ship bread and butter and sausage for nighttime lunches. We didn't have any sausage. We didn't have any butter with bread. We would go down to work in the nighttime on the 12 to 4 watch and the 4 to 8 watch with a piece of dry bread. We had a hot meal at nighttime for lunch at half past five in the evening. We did not have food for the nighttime. We asked the captain for more bread and butter and sausage a few times and I asked the chief steward and he refused and he said: "You don't get it," and we never got it. It was only the officers that got for nighttime one egg, two slices of bread with butter and that was kept in the ice box where they could get it but the crew got nothing for the whole night. The engineers sometimes wanted an egg and would want a piece of bread. At no time while I was on the ship was there bread or butter or jam or sausage set out for the crew in my department to eat at night.

It was about the 14th or 15th of September after

(Testimony of Frederick W. Kaiser.)

we had been on strike 4 or 5 days that I seen the paper (which was presented to the witness unidentified). I signed a blue card but not when I went on strike on Sept. 9. I was going to the union hall and I asked a crew member of the SS Cotton State and he told me where the union hall was in Portland and I was accompanied by Mr. Hobeck, Goldsmith, Symonds. That was about the 14th and it was there I first saw this paper. We went to the union hall and asked for help, and since the 9th of September we did not get any food aboard the ship. We had organized the union in Europe that was affiliated with the SUP and so we asked the SUP to help us in our strike. That was about the 14th or 15th of September and Mr. William Benz told us if you want us to aid you you will have to sign your pledge card to ITF, and I said, "O.K. I fix it." That was about the 15th that I came back aboard the ship with the pledge cards and I asked the crew members if they would sign or not and so the whole crew who went on strike signed the pledge cards. That was about the 15th of September. I never contacted the union before we went on strike. It was on the 8th of September that I got in an accident. I got two broken ribs in the evening about half past ten. I never went to a meeting aboard the ship in the nighttime. A few sailors may come aboard the ship when you are in harbor to meet a few sailors from another ship and you speak about your conditions, just as you would find in the taverns near the harbor where the sailors are talking. They speak about their

(Testimony of Frederick W. Kaiser.)

ship and these American seamen were very interested to see a ship like ours. They told us, "We are on another ship here and can we have a look?" It was the SS Cotton State lying right alongside us. I think there were other sailors that came aboard our ship. I don't remember all the sailors who came aboard with crew members of the SS Riviera. When the other sailors came aboard they said they came to look around. It was not at a meeting. They came only aboard the ship to take a look and leave the ship later, that was all. About 3 a.m. of Sept. 8 I did talk with the other sailors that were on the ship. They heard about my accident and one looked at my arm and said, "How do you feel?" and I said, "Goddam it, I don't feel good," and he said, "Oh, I hope that you are not being so long sick." That was all that I spoke with them and then they left the ship. We did not have a meeting. On that morning no blue cards were passed around. It was on Sept. 9 that we went on strike. As our reason for going on strike we told the captain that we want to have better food, but we don't believe him. He told us many things so under these conditions the crew said that they would never sail again under the present conditions. We refused to sail again with the ship. Sure we told the captain something about being shanghaied from Bremen. We were speaking about that too. When you have a case like that you tell about all the mistakes that are made that you have aboard the ship. You talk about them all together and you say what you don't like. We gave the captain a

(Testimony of Frederick W. Kaiser.)

paper signed by myself and about 24 other members of the crew. The paper said, "Because we have been shanghaied in Bremen for two years; on account of what the captain promised in this and in related cases we want our pay off and home voyage. Crew of the Steamship Riviera."

The point about being shanghaied was about the biggest point in there. At Bremen we signed articles March 19 and we had all been in the salon and it was explained that this ship is on a coal cargo trip between the United States and Europe and we signed the agreement with the company in German and English language, and that says the articles were for 30 days or longer. That means that it was in this time for a trip to the United States and back, and later on we been at sea we heard that this ship was not going north to the United States to get coal cargo, that the ship was going to New Orleans to pick up grain cargo for India. We never knew that before we left the harbor in Bremen. The whole story is that we sign on the payroll on the SS Riviera believing that we make one trip between Europe and the United States and that we could sign off every time we come back to Europe. I signed an agreement outside of Bremen after I had been at sea. (Respondent's Exhibit 7 was shown the witness.) The signature there is my signature. It says that I sign for 30 days or longer indefinitely as long as the ship wanted to keep me. I read through that before I signed. It is marked in there for 30 days or longer. That remains for me that is for one trip. That is explained, the

(Testimony of Frederick W. Kaiser.)

second mate, aboard ship, Mr. Hardy, this 30 days or longer is for one trip and it can be this trip in 30 days and you come back you can sign off. The agreement was with the second mate. The captain had nothing to do about this agreement. That belonged to the second mate and he handed us this agreement and we signed it in the office of the second mate, Mr. Hardy in his room. That was the contract which I signed after the ship left Bremen. (Respondent's Exhibit 8, the ship's articles, was shown to the witness.) I signed the articles but I never saw the outside of them before we got to New Orleans. It was when I was asking the captain about them. I remember the sheet that has my name but it was not put together like that. It was only one sheet and the outside was not shown to me, only this sheet of paper like that. It is marked in here my date, my wages and what ship I been on last. That was all that was shown to me. Nothing was explained about my agreement. The agreement was not put together in form like that, it was only one sheet on the top and later on in New Orleans Captain Cowden showed me an agreement that is like that, but what I saw when I signed was this place here where I signed about my wages, what I was to get on the ship and what ships I had been on last. That is all that I knew about the agreement. (The sheet on which the witness' signature appeared was received in evidence.) When I come aboard the ship I have to sign articles in the German seamen's book and also articles hanging

(Testimony of Frederick W. Kaiser.)

out in all mess rooms that you can read them before and you know what happens. On every voyage I have taken I have signed articles and about the articles on the Riviera I knew about the contract for 30 days. It was for one trip. I don't know about this agreement here. This is different. I knew I was signing articles about a trip between the United States and Europe. Captain Johnson was present but he did not explain that the voyage was for a maximum of two years. I didn't ask the captain how long we were signing for. I saw in the agreement that it was 30 days alone so I did not have to ask again. The agreement was not signed at the time the articles were signed. The agreement was signed later on. I signed the agreement the next day after we left Bremen and I signed it in the room of the second mate, Mr. Hardy. I think there were three copies of the agreement signed. They are not kept in the German Labor office. It is only the German Merchant Bureau. I have not seen anybody from the Merchant Bureau and nobody told me that coming from this German Merchant Bureau. I signed three copies and I don't know what became of the other two. I got a copy of it. It must be in my luggage.

(Exhibit No. 7 was received in evidence.)

Exhibit 8 was received in evidence.

The copy which was given to me was not signed by Captain Cowden. I will bring it to court tomorrow. It is up in jail with my papers.

Captain Cowden and Captain Johnson were there when I signed the articles. Captain Johnson did not

(Testimony of Frederick W. Kaiser.)

explain fully that I was signing for a voyage not exceeding two years. With respect to what I meant by what the captain had promised in the past, I was referring to a few agreements about payment, about ship's overtime. We had an appointment aboard the ship with Vice German Consulate General, Mr. Pheifer, at Bombay, and the captain promised to better those things and it was promised that we would get better food. The captain promised to pay wages like wages already like we have in ship, and overtime pay would be paid in the harbors, but he refused to pay it. I asked the captain for that in Kawasaki, Japan, and he refused to pay, so don't get it. The captain promised to pay overtime and then later on he said he would not pay overtime. The captain promised to better the food and to buy more vegetables and nothing was done and that is what I referred to in the second provision of the paper. Many of the crew complained to the captain about the food but I personally did not complain to the captain about the food and the captain did not promise me personally that the food would be better, but the chief steward told me that the captain said the food would be better. It was the chief steward who made the promise. We did buy better beef in Singapore, but we cannot use it when he keeps it in the ice box; they refused to use it. Then you have to eat lot of rotten buffalo. Goddam, that is not promise, that is not done what the promise was. The promise that the captain made was to the whole crew.

(Testimony of Frederick W. Kaiser.)

I went on strike on Sept. 9 and in the meantime I was working on the ship. The first time I talked to a representative of the Sailors' Union of the Pacific was about the 14th. That was the first date on which I got the blue cards. I saw Mr. Cochrane about the 10th or 11th. I don't know. He could have been on board the ship on the 8th but I had not been speaking to him. The first time I got the Makiki paper regarding the SUP was about the 14th or 15th. It was not before. It was at the time I went to the Sailors' Union hall. They did not give me the blue cards at that time. I got the blue cards first and then later on they told me about another strike on the Makiki and I saw that copy only after I delivered the blue card to Mr. Benz, the agent of the SUP. The blue cards were to the ITF. The Sailors' Union of the Pacific is affiliated with ITF which is our union in Europe. We are affiliated too. When I got the blue cards on the 14th or 15th I went around and got the other members of the crew to sign them. When I asked them to sign I told the men that if we stay in this strike very long we won't have anyone to help us and I told them that I met the agent of the SUP hall, Mr. Benz, and he said that in this case he wanted to give us help. That is all I said, so all the members of the crew signed the paper. I am positive that I didn't get the blue cards before the 14th. There were no other blue cards except the ones which authorized the ITF to represent us. In Bremen I belonged to the ITW, that is Transport Workers Union in Germany and it is affiliated

(Testimony of Frederick W. Kaiser.)

with the ITF, International Transportworkers Union. I was already a member of the ITW. The blue card designated the Sailors' Union of the Pacific as bargaining agent. They didn't ask us to be members. After the strike all the members of the crew joined with you and refused to do work. We refused to work and there were some of them who had refused to work before the strike. The captain did not order them to either work or get off the ship. He said, "If you want to go on strike go ahead." That was all he said. But he didn't say that to me as I was lying in bed. I was asked by Mr. Closterman in the presence of the master whether I would resume work, sail with the ship or not and we said we refuse to sail with the ship under present conditions and I remember so well one British fellow aboard, Mr. Symonds, said to Mr. Closterman, "Well, under the present conditions we refuse to work." I said nothing about increased wages. I was satisfied with the wages. I never asked for any higher wages. I did not request the Sailors' Union of the Pacific to secure an increase in wages. I had not spoken of higher wages with anybody. The entire matter had nothing to do with the wage scale. It was only about conditions aboard the ship, the food, the living conditions and the seaworthiness of the SS Riviera, in the particulars to which I have testified. After I got out of bed I was able to go down to the union hall and also able to picket the vessel. At that time I didn't picket myself. I was

(Testimony of Frederick W. Kaiser.)

not able because of my broken ribs. I was not sitting on the gangway watching the pickets but I still agree with the whole crew. With respect to our food supplies while we were on strike, we got some food from other ships that came in and there was help from other sailors. We were not being supplied aboard the ship. We did not get supplies from the Sailors Union of the Pacific except while we were in jail, we were supplied sometimes but that's all. While we were on board the ship we were not furnished with assistance by way of food supplies or money by the Sailors' Union of the Pacific. We were supplied by collections from longshoremen and we got food from other ships that came in and they brought food from their kitchen and the men from our kitchen went over to their kitchen and took food from there to supply us. That was all. So far as I am concerned I have not asked the Sailors' Union of the Pacific to make a new contract with the owners.

In response to a question propounded by the Court the witness testified:

I hoped that the SUP would aid us and give us help so that we could make a final settlement with the company, that we would be better supplied and the ship would be in good condition and would see that the agreement would be right. I never asked anybody and nobody in the crew was expecting to get higher wages. That was not our idea. The wage scale on the Makiki reported what the Sailors Union had done on another ship. I did not discuss

(Testimony of Frederick W. Kaiser.)

with Mr. Benz of the Sailors' Union that the Sailors' Union was going to get me the same wage increase that they had got on the Makiki. I was only asking for help in our case, in this fight for better conditions, that was all. I did not discuss with Mr. Benz about getting this Makiki wage scale. Nobody was asking the captain for that as far as I know.

Now I have produced the labor contract to which I have previously referred that was signed when I joined the ship in Bremen. It was stipulated that the copy produced by the witness was not signed by the master.

I have seen other copies from other members of the crew and they are not signed by the master, not one of them.

On Redirect Examination by Mr. Carney the witness testified as follows:

I have checked with the members of the crew with respect to their copies of the labor contract. Nearly half of the crew do not have a contract like this. A few crew members signed on in Arhus and they didn't have a contract like this and all the other people who have a contract like this it is not signed by the master. I have not seen any contract signed by the master, not one.

Exhibits 9, 10 and 11, which respondent asked to have produced, were produced and put in evidence, which consists of the blue cards signed by Peterson, Pedersen and Kaiser.

JOHN A. ANDERSON

a witness produced on behalf of libelants, being duly sworn on Direct Examination by Mr. Carney testified as follows:

My name is John A. Anderson and I live at 1718 SW 16th. I am an experienced marine surveyor and I am a retired steamboat inspector. I hold master's license unlimited in any water and any gross tonnage. I have been employed here in Portland as a marine surveyor by the government over a period of 7½ years. I am familiar with Liberty type vessels. At Mr. Carney's request I went aboard the SS Riviera to check the steam smothering system on October 15. The steam smothering system consists of steam pipes that lead into the holds for the purpose of smothering fire in case of fire in the cargo spaces. The steam pipes are controlled by valves on deck. There is a steel cabinet on deck where the valves are located and in case of fire you turn the valves on to the particular space like the lower hold or the 'tween-decks, paint locker, wherever the fire happens to be. I checked the valves of the steam smothering apparatus on the SS Riviera on the after deck No. 4 and No. 5 holds. I found that the valves leading into No. 4 'tween-decks and No. 4 lower hold were froze, and the pipe leading into No. 5 hold was froze, and the valve leading into the paint locker was froze. There was only one valve that worked and that was No. 5 'tween-decks. The valves would not turn. In my opinion as a mariner and as a surveyor of vessels such as the SS Riviera with its steam smothering

(Testimony of John A. Anderson.)

gear in the condition I found it, it would not be seaworthy. They would never pass a test for seaworthiness.

On Cross-Examination by Mr. Krause the witness testified:

I tried to turn the valves by hand without using any tool to turn them. They have a little wheel on top. I could not move them with two hands and upon that basis I say they were frozen. There were no tools supplied there for the purpose of opening the valves. I have never seen a rod that fits into the wheel on top for the purpose of turning the wheel and I have never seen such a thing on any ship. Liberty ships are not supplied with those rods for the purpose of opening those valves. The vessel was unseaworthy because I could not open the valves by hand. The seaworthiness of a vessel when they go to sea is determined by the steamboat inspector. I do not know that a vessel is inspected every time it goes to sea by surveyors from the Marine Bureau and I have been a master mariner. I have been master of vessels for over 20 years. In our inspection to determine the seaworthiness of a vessel the vessel is compelled to have an inspection every year and it is given a certificate of inspection, and that inspection record is good for one year. She can make several trips during that year without any inspection in between times. With respect to the cargo and so on, and the inspection that is made before she starts the voyage, that is a different thing. There are cargo

(Testimony of John A. Anderson.)

surveyors. They might come aboard and inspect her any time they want to. I made my inspection on the 15th of October. I don't know anything about when the valves were last opened. They cannot be opened by hand unless it is a stronger man than I am. I don't know if they could be opened with a bar so you could exert more force than you can with your hands. I have seen them froze before on other ships where you couldn't do a thing to them until you took them apart and chipped some of the rust off the valve stem because if you try to force them with a handle like you say you are liable to twist the handle right off. The valve stems are made of some sort of metal. It is a mild steel, I suppose. Not bronze and I don't think copper. If they were made of brass they would not rust, but there would be a lot of verdigris that would stick just as bad as rust will. I think on Liberty ships the valves are made of iron but I would not swear that the entire valve is made of iron. I have never had one apart. There may be some brass parts in there.

On Redirect Examination by Mr. Carney the witness testified:

The valves that operate the steam smothering gear are located in a box-shaped metal cabinet. In that cabinet there is one valve for the lower hold, No. 4. There is one valve for the No. 4 'tween-decks. There is one valve for lower hold No. 5 and one valve for the No. 5 'tween-decks. There is a master valve letting steam into the cabinet. There is a valve for

(Testimony of John A. Anderson.)

the paint locker and there is a valve for bleeding the system when you shoot steam into the holds or else you would get the holds full of water. There are 8 valves altogether. I would judge the cabinet to be 30 inches by 30 inches. It was hard to tell about the condition of the valves with respect to rust and that sort of thing because they had been painted black. There might be rust under the paint. I wasn't interested in that so much. I was interested in whether the valves would work or not. In my experience in testing Liberty type vessels and in testing this steam smothering gear, it is absolutely necessary that these valves in order to be passable, are able to be turned by hand. It would be possible if the tool was not too long to use a tool inside the box, but the valves are fairly close together. In my experience such tools are not usually furnished. The valves are supposed to be worked by hand. If they do not they have to be repaired. I did not see any such tools as Mr. Krause described on the SS Riviera. There might have been one but I didn't see any.

On Recross-Examination by Mr. Krause the witness testified:

The valves have to be set up tight or else they would damage the cargo. They have to be set up tight by hand. They are hand-set. The engineers that go over them are not supposed to tighten them with a tool in order to make them tighter, because if a valve is good you only have to set them by hand.

(Testimony of John A. Anderson.)

that's all. They are supposed to be tight then. I have opened up and set a lot of them by hand, always by hand.

On Examination by the Court the witness testified:

This was a foreign ship and I do not believe that she came under our inspection laws. If she was an American ship and was brought in for repairs before the ship could leave it would have to be certified and a certificate issued by the American Bureau. It could be certified by an insurance carrier.

H. BERG

a witness produced by libelants, after being duly sworn by the interpreter, Frederick Kaiser, upon Direct Examination by Mr. Carney, testified as follows:

I am first assistant engineer of the SS Riviera. The officer next in command in the engine room is the chief engineer. I signed the articles at Rotterdam in February, 1952. I made one trip as second assistant engineer aboard the ship to Norfolk and later on March 19 in Bremen I got a job as first assistant engineer. In all my experience on the SS Riviera there has never been any fire drills conducted where water pressure was actually put on the fire hose. During my employment on the Riviera I recommended to the chief engineer that additional fire hose equipment be furnished to the ship and I made the recommendation one week before we came to Portland. At sea I spoke to the chief engineer

(Testimony of H. Berg.)

about repair work what must be done aboard the ship, and he told me that the fire equipment must be repaired. I requested the chief engineer prior to coming to Portland that the fire hose and fire-fighting equipment be purchased in Portland to bring the fire-fighting equipment up to standard. The chief engineer told me that the time in Portland was too short, that we cannot repair the fire equipment and cannot make anything else. I also told the chief engineer that the fire hose down below in the engine room and in the holds were not usable and the chief engineer said to go upstairs on deck and maybe you can find other hose and change them for the ones in the engine and deck department.

I know what you mean when you speak of the steam smothering gear and I know what that equipment is. I had inspected the steam smothering gear but I have not had time to overhaul the gear, to unscrew it. The condition of the steam smothering gear on Sept. 9 was in very bad condition. It was rusty. It was impossible to turn the valves. All of the valves that were on the deck outside the engine room would be rusty after two or three weeks if they were not serviced and those valves had not been serviced. We were short on work hour the most time aboard ship. Ever since I came on board the vessel the steam smothering valves were frozen and rusty. It is impossible for a rusty valve to open by hand, and if I say the valves were rusty they are frozen too. It would be possible to turn the valves by use of a wrench and it would be possible, too, to break

(Testimony of H. Berg.)

the valve in the spindle. To my knowledge there were no plans made while the ship was in Portland to repair the valves on the steam smothering gear. The chief engineer refused to do some of the things about the steam smothering valves. There were portable fire extinguishers on the ship that can be lifted by hand. On September 9 I can't say whether they were working. I could not test the fire equipment and you would have to test it to know if it was working. If a ship comes into the harbor to be inspected the whole fire equipment must be tested. That includes not only the steam smothering but other fire equipment and all transportable fire equipment must be tested. By the portable fire equipment I mean the fire extinguishers. If the extinguishers are not in use within a period of a year they must be tested, or you cannot say if they are working or not. One was tested since I came aboard ship and that was working but that doesn't say that all the others would work.

On Cross-Examination by Mr. Krause the witness testified:

I have been going to sea since 1938. I sailed 9 years in the merchant marine. I was in the Navy between 1940 and 1945. I hold a license for ship's engineer first class. That is the license that means on ships of 5,000 tons. I can sail as chief engineer on ships under 5,000 tons and on ships of 5,000 to 10,000 tons I have a license as first assistant engineer. With respect to the inspection that I made of

(Testimony of H. Berg.)

the steam smothering system I tried the valves and saw it was impossible to turn them and I went to the chief engineer and told him that they must be repaired. I tried to turn them with a wrench but it was not possible to open them. Then I went to the chief engineer and asked him to repair the valves. The valve I tried to open with a wrench was the steam smothering master valve. It is located forward down toward the bridge. From there the pipes go to the engine room. It is that valve that would allow the steam to go into the holds. The valve is 2 to 2½ inches on the inside. The size of the wheel for turning the valve would be about 1 foot. (The witness indicated with his hand the approximate size of the wheel and it was about 10 or 12 inches in diameter.) Or 10 to 15 centimeters. I last looked at the valve about three months ago. I did not say that I made an inspection of the valves about a week before coming into port. I spoke to the chief engineer about the valves one week before we came to Portland but I didn't say that one week before I came to Portland I tested the valves. I well knew that the fire equipment must be repaired and overhauled and it is the duty of the chief engineer that the repair work be done and if he doesn't do it he might go to jail if an accident should happen about it. It is not only the steam smothering equipment aboard the ship, there is CO-2 fire equipment in the engine room that was unusable because the pipes were rusty and locked in there. It was my job to use the equipment and not my job to make proof of them, that is

(Testimony of H. Berg.)

the job of the captain and the chief engineer. The only test that I made myself was on the master valve on the deck. All the steam pipes, fire equipment was so rusty that it was dangerous to open the master valve and it could be possible that we would get many accidents and many people would be burned by steam. The steam pipes for the steam smothering valve was the same, in the same condition like the pipes for the winches on deck. They were in very bad condition, rusty. If you think they can be opened you should go with me aboard the ship and open the valve. You can try to open it. It is a long time now that I was aboard the ship. It was impossible to open the valve on deck by a wrench. It was in Calcutta that I tried to open the valve and it was impossible and it was in Calcutta that I told the chief engineer. That was about three months ago.

Whereupon, upon an objection made by Mr. Krause concerning the interpretation which Mr. Kaiser was making of the witness' answers, Mr. Bruno C. Linde was substituted as interpreter and the witness testified through his interpreter as follows:

The valves of the steam smothering system must be tight so that no water will get in the cargo. The valves for the system have to be opened by hand. The rules and regulations require that they can be opened by hand. I am talking about international regulations. I do not carry a wrench for a valve in

(Testimony of H. Berg.)

my pocket. We have hooks for valves and ventilation hooks on board the ship. The purpose of the valve hooks is to tighten the other valves which are fit and used for the boiler system.

NILS RICHARD PEDERSEN

a witness produced on behalf of libelants, after being duly sworn, testified through an interpreter as follows:

I am the bosun of the SS Riviera, and I signed on October 3, 1951, and have sailed continuously on the SS Riviera from that time until September 9. I have been going to sea as a seaman for from 12 to 13 years. I was hired as an AB from October until shortly after Christmas and then I was hired as bosun from that time until the present. My duties aboard the ship were to put the men on duty, to see that they were released at proper times according to the orders given by the chief officer. My job together with the carpenter includes the work of the lifeboats; that they have never been given a chance to really care for the lifeboats on account of so many other things receiving priority you might say, such as the cargo holds and the deck and so on. From the time I went to work on the Riviera none of the lifeboats have been lowered over the side of the ship. While I was on the ship no fresh provisions and emergency supplies were placed in the lifeboats except water which had been placed in the lifeboats after I was hired and was changed twice. I have seen

(Testimony of Nils Richard Pedersen.)

the equipment in the lifeboats which is stored there in case of emergency. Two of the lifeboats are without any motors in the boats and the air tanks are rusty with holes in them. I saw those lifeboats in Calcutta before July of this year. Before I stopped working on the vessels on Sept. 9, two of the lifeboats that had defective air tanks had been repaired. The air tanks were taken out of the boats in Calcutta and the ship proceeded via Japan for the Pacific Coast without those tanks in the boats and the lifeboats were then finally repaired on the Pacific Coast. The air tanks had not been replaced but the lifeboats had been temporarily fixed up and supplied with patches over the holes. The equipment in the lifeboats was below par, very, very bad. When the patches were put on the boats they remained on their cradles. With respect to the condition of the hull of the lifeboats on September 9, their condition was very poor. If one stepped too heavily on it he would probably go through. The hull is made of metal. They were very rusty and just about rusted through. It was part of my work to scrape and paint the lifeboats. We were working on fixing up the boats and scraping it before painting when the chief officer stopped us from doing it because the chief officer realized that if they worked too long on them there would be nothing left and he figured that the boats would be fixed up by the time they came into the dock on the Pacific Coast. I was not allowed to do work on this vessel with respect to the lifeboats the same as I was allowed to do the work on other ships

(Testimony of Nils Richard Pedersen.)

on which I have had experience. The work that I was allowed to do on this vessel differed from that which I was usually allowed to do on other vessels. When I was sailing on Danish boats I would ask the chief officer for a couple of men to fix up the lifeboats in which case he would get two men and fix up the boats, whereas in this case I told the chief officer that they needed repairs and I was not allowed to fix up the boats accordingly.

On Cross-Examination by Mr. Krause the Witness Testified:

The voyage I signed for in October, 1951, was concluded. In March, 1952, I signed on for another voyage. The ship was in a fine condition by the time I was rehired in March, 1952. The hull of the lifeboats were made of galvanized iron. I am not a chemist and he does know even galvanized iron can rust. The galvanized iron was rusty. The air tanks were removed from the lifeboats and taken ashore for repairs. I did not say that they were taken ashore in Calcutta. While the ship was on the way over from Japan the air tanks were in the boats. However, they were loose and there were holes in them. They had not been repaired before the trip across the Pacific. They were brought ashore here in Portland for repairs. There are two men including myself that work on the lifeboats. I worked on the lifeboats 3 to 4 weeks. Two men besides myself worked on the lifeboats. I supervised the work. They removed the air tanks and scraped the inside of the hull and in doing

(Testimony of Nils Richard Pedersen.)

so they went through the hull. They painted where they could, where they had a chance. All four boats required repairs on the hull after the vessel got to Portland. The provisions in the lifeboats presumably were very old. Maybe they were there from the time the ship was first launched. All the provisions were there but they were merely unfit for human consumption. The provisions in the two boats with motors were in sealed cans whereas in the other boats the compartments in which the provisions were contained were defective allowing water to come into the provisions. I opened some of the cans of emergency rations in which the provisions were stored. One was a container with bread and there was metal around it and it was rusty and I could twist the can open. The equipment used for the release of the lifeboats from the ship in case of an emergency was not in order. The equipment had been neglected. We had never been allowed to fix it up. The davits could be moved out on the side but they had not been swung. The davits could be put out on the outside of the ship but it took two men for each of the davits to do so on account of the screws being rusted. With respect to the equipment for the four boats, they had one or two life belts and these were even defective. There were only one or two floating anchors for the four boats. I told the chief mate that he had to make up additional floating anchors but I was not allowed to do so. The lifeboats should have been thrown away because there wasn't anything of worth in them. In March of 1952, the boats could be put in the water

(Testimony of Nils Richard Pedersen.)

but I believe the condition of the boats was as it is now. It was similar to the way they are now. Before the men went on strike they had repaired the holes in the lifeboats here in Portland. I went on strike the 11th of September.

On Redirect Examination by Mr. Carney the Witness Testified:

Repairs in Portland were only done on two boats that were leaking. As far as I know no work at all was being done on the other boats. It would be usual when a boat is being repaired in dock that the condition of the other boats would also be checked but they were not. In my experience when lifeboats are being repaired in other cases they are put in the water to check them to see if they are tight. However, that was not done in Portland. So far as I know they were not going to be checked in the water. I do not know when the Riviera was scheduled to leave Portland. As far as I know it was around the 13th or 14th of September. It would have been possible to put the lifeboats in good condition between the time the men quit working and the time the vessel was supposed to sail if the ship had allowed the men to do the work. Up to the time I left the vessel nothing had been done to replace the emergency equipment in the lifeboats, such as provisions and other emergency equipment. That was one of the reasons why I quit working on the ship on that date because they had not replaced the equipment in the boats. Whereupon the libelants rested their case.

JOSEPH H. JOHNSON

a witness produced on behalf of respondent, the SS Riviera, after being duly sworn testified as follows:

Direct Examination

By Mr. Mosser:

I am Captain Johnson and my occupation is master mariner. I hold master's certificate from Great Britain and have been going to sea as a master for 15 years. I was formerly the master of the SS Riviera, from July, 1950, to March, 1952. My successor was Captain Cowden. I had something to do with signing on a crew for the Riviera in March, 1952, at Bremen. The articles were British articles according to the British Maritime Laws. Exhibit 8 is the articles. That is the set that was signed at Bremen with respect to the libelants in this case. I was there at the signing on of all of the men. When the men signed the articles they were told that they were signing for a period of two years, not exceeding two years and all conditions of the British National Maritime Board regarding wages and hours, etc., would apply. I spoke to the men in English. The chief engineer was there talking German as well. He is now on the ship. He translated to the men the remarks that I made, but they mostly understood what I was saying in English. There was another agreement with respect to the German seamen made up and signed. That agreement is exhibit No. 7. That is the type of the original agreement. An agreement like that was made for each of the German nationals

(Testimony of Joseph H. Johnson.)

who signed on as members of the crew in March, 1952. That is required by a governing body in Germany. Captain Cowden was present at the time the crew was signed on. Captain Cowden with the assistance of the ship's local agent in Bremen made out the separate contracts. They were all made out before the ship sailed from Bremen. They had to be. Otherwise the ship would not obtain clearance. They were not made out at the time each of the men signed the articles. It was just shortly after that they were all made out. The articles were signed first. There were five copies prepared for each man. One was for the ship, in care of the master, one for each one of the seamen, one for the foreign office, one for the agent and one for the seamen's register. One copy of each of these contracts was filed with the German authorities that are supposed to receive them. Just one copy was signed by both the master and the member of the crew, as far as I am aware, one copy. Those documents were signed on the ship at Bremen. All the crew signed on there. One signed on in Egypt and individual replacements signed on later. I signed on a full crew in Bremen. There were completely new articles signed at that time. Some of the men who had previously served on the ship signed off the articles and on new articles at that time. The articles were signed by all the men who went on the ship at that time prior to the time the ship left Bremen. They signed the labor contracts too. With respect to the condition of the ship prior to March, 1952, and the condition of the ship in March of 1952,

(Testimony of Joseph H. Johnson.)

when I left the ship I would say she was in excellent condition all over. I had had my wife aboard the ship for many months. Exhibit No. 12 is a laundry account, apparently when the ship was in Aarhus, Denmark on Oct. 12, 1951. It is the ship chandler's account for Aarhus. It is an invoice. It covers supplies that were delivered to the SS Riviera at that port on that date. I ordered the supplies that were named in that invoice. To my knowledge they came aboard. That is the bill which I received for those supplies. The mattresses that were shown in the invoice were the same ones aboard the ship in 1952, when I left the ship.

It was offered and received in evidence over the objection of libelant as to its competency and relevancy.

The mattresses were new at the time they came aboard the ship. The articles to which I have testified were British articles and covered British Maritime Regulations. The regulations have provisions regarding the quantity and quality of food to be carried aboard the vessel and those provisions are contained in the actual form of the articles which is Exhibit 8, page 3, at the end. My service as master has been aboard British ships. That is the standard provision concerning food which is appliable on British ships. The articles, exhibit 8, were bound together in their present form at the time they were signed by the members of the crew.

(Testimony of Joseph H. Johnson.)

The exhibit was offered in evidence and on voir dire examination the witness testified in response to questions asked by Mr. Tanner as follows:

The articles were bound by some tape. The tape was there at that time. The tape was on the whole of it. The same tape that appears on the exhibit now. I do not know who put the tape on. I think the tape that is on there now is the same tape that was on there at that time. The endorsement is on the back. It was just exactly like this and that last page was on there at that time with respect to their wages and all. The exhibit was received in evidence.

On Further Redirect Examination by Mr. Mosser the witness testified:

In my experience as a master when you get in home waters you usually change the articles and renew them. Usually you renew the articles if you come inside home waters, like we come through the United Kingdom, supposed to sign articles for two years, but we are only away some two months, but change the articles when we arrive back in the United Kingdom. If you signed articles in the United Kingdom for two years and you return after two months, you renew the articles. At the commencement of every voyage when you are leaving home waters there are articles to be signed by members of the crew. When we return to home waters even though it may be a shorter period than provided in the articles, they generally terminate the

(Testimony of Joseph H. Johnson.)

articles and start out with new ones. The articles here, exhibit 8, are just the same articles as are generally signed on ships. The provisioning and the obligations of the crew, the capacity in which they are signed and the wages to be paid are always contained in the articles. The Riviera was last in dry dock in May, 1951. She was in dry dock here in Portland on September 3 of this year. That was when she was last in dry dock. I was not here at that time. She has just been in dry dock before that about May 20 or May 21, 1951. I suppose the Riviera is insured against loss at sea, fire and so on. With respect to the surveys that were made of the ship as to her seaworthiness, you get an annual load line every year. It is kept up to date. Surveys can come at whenever they see fit to examine but an annual survey is held every year. You could have water damage. Surveyors are called in when they have heavy water damage. The surveys that are made regarding seaworthiness of the vessel to carry particular cargo is only done by insurance companies to see that the holds and the regulations regarding carrying of that cargo are complied with. The American Bureau of Shipping makes inspections on the Riviera.

In May, 1951, when the ship was in dry dock I was with the ship. It was undergoing certain repairs. The survey was made during the time the ship was in dry dock. A load line certificate was issued and it was endorsed. I sailed with the ship from May, 1951, until March, 1952. With respect to the valves of the steam smothering gear, to keep them in order they

(Testimony of Joseph H. Johnson.)

must be more than hand tight. Otherwise there would be a leakage through the valve. There is steam or water in the lines on the engine side but there is no water or steam in the hold side past the bulkheads. If the valves leak, or are a bit open, there is danger that the cargo will be wet. They are kept more than hand tight because some of the men might come and open them if they are hand tightened, so in order to prevent members of the crew inadvertently turning one of the valves they are kept tightened up for that purpose. There are valve hooks. They are usually called wheel spanners. There are two hooks on them and there is a steel bar with two hooks that come down with the valves on top of the valves. You pull on the steel bar to get leverage. I was familiar with the launching gear of the lifeboats until March of 1952. They were in excellent condition. During the time I had been on the vessel the lifeboats had been lowered from their position in the cradles. I have had occasion to examine the launching davits and the launching gear of the lifeboats on the Riviera within the last day or two in Portland. They are in good working order. I examined the lifeboats in the last day or two. I arrived in Portland Tuesday morning, just a couple of days ago. Since the time I have been here there has been no work on the lifeboats. I examined them to see if work had been done on them recently. As far as I could see it was started on the lifeboats. I have not examined them thoroughly. I had a look at them. With respect to whether any patch work had been done on any of the hulls on any of the four lifeboats, I didn't observe

(Testimony of Joseph H. Johnson.)

none at all. The hulls are made of galvanized steel. It is usually painted over. Two of the lifeboats are motor type boats and two have no motors.

On Cross-Examination by Mr. Carney the Witness Testified:

I got here last Tuesday. I have not been living on the Riviera. I have been aboard her. I did not start the motors in the lifeboats. I did not try to actually lower any of the boats. I did operate the mechanism of the launching gear. We checked the davits this morning. That was when the judge was there and you were there. That is the only time that I tested out the davits. I had a look at them Tuesday afternoon when I was aboard just by walking down the deck and observing them. The lifeboats are covered with canvas. When the ship is at sea I don't think that the lifeboats receive a small amount of water, unless the canvas is very bad, unless it is very heavy weather. If the boat went through heavy weather the lifeboats would receive water through the canvas. If the water gets in the boats it is out as quick at is gets in. It just runs out as quick as it goes in for the plugs are not in. It is necessary many times to chip and paint the inside of these boats and that is because corrosion sets in. It is quite possible that more corrosion sets in the boat from the inside while it is sitting in the davits. This morning I went into one of the boats. That was the same boat that you got in. That is the only one that I actually looked in.

(Testimony of Joseph H. Johnson.)

I found the full amount of equipment that should be there. I did not say that they were all ready for sea. You have to go through them and look at them and just coming into Portland I would have to have a look through and see. It is my understanding that they are under survey now and being attended to. I saw some work being done on them. Paint was being scraped and they were being tested. That was only on one or two of the boats, particularly the forward boat on the starboard side. I did not examine the front of it. Prior to March, 1952, I was master of the vessel for 20 months. I took the vessel on voyages all over the world. I had made quite a few voyages between Europe and the East Coast of the United States. I was carrying coal at the time. I think we made six voyages. The duration of the voyage was a month to five weeks. If we were in Germany we signed the crew in Germany. I think I signed a crew in Germany once. The articles that I signed on those voyages were for two years, not exceeding two years. They didn't say anything about 30 days at all, not exceeding two years. The articles I was signing on were exactly the same as the articles here, British type articles. The articles were sent from the managing agent in London at my request. There were agreements drawn up in addition to the articles written partly in German, and in English. The agent or Captain Cowden typed in the articles 30 days or longer. That is the German agreement. It was for 30 days or longer. The men were signed on for two years, not exceeding two years. With respect to what

(Testimony of Joseph H. Johnson.)

is meant by putting in 30 days or more, that is the German Seamen's Agreement according to their Labor Law in Bremen. Signing on in Hamburg it is not required. In my voyages from Germany I have used articles that did not have the 30 days or longer. With respect to why I did use the 30 days or longer at this particular time, we have got to because the ship signed on in Bremen where she comes under the American Zone, that is the regulation applying to Bremen. When you are making these voyages from the United States to Europe very often I am signing on new crews, parts of the new crew each time I got to Europe. That was the practice that was going on for the six voyages. When Captain Cowden relieved me some of the members of the crew remained on the vessel.

There was an annual load line survey made of the vessel in May, 1951, an inspection of the ship's bottom. With respect to the 2 or 2½ inch valves that Mr. Krause asked me about, having been tightened down mechanically in order to safeguard and protect the cargo in the holds, I do not know if it is a globe valve or a gate valve. I have an idea that it was a gate valve. I couldn't tell you if the 2 or 2½ inch valve was a globe valve or a gate valve. If it was a gate valve that is ordinarily used for pressure, I would not say that you would have to turn that down mechanically. I don't know, I couldn't say. I didn't say it was a gate valve. If I wanted to know what valve it is I would ask my engineer

(Testimony of Joseph H. Johnson.)

about it. That is what he is there for. You don't expect the master to know all about valves, do you? I am not a mechanic. With respect to the valves I have said that you have to tighten them down with mechanical leverage. That is usually done with steam valves.

I have been talking about the valves that regulate the steam smothering system and I say that those valves have to be closed with mechanical leverage. They may accidentally come open and damage some cargo from the vibration of the ship or from some of the crew coming along and opening them up. On this ship the valves are kept in a compartment that is locked. I don't think that makes any difference or is any protection.

Redirect Examination by Mr. Krause:

The usual term for crews that have been signing British articles in the last several years is for a term of not exceeding two years.

On Examination by the Court the Witness Testified:

The ship was in dry dock in May of 1951, in Hamburg. An examination was made of her rudder, under-water valves; sighting of the bottom of the ship. An examination was made while in dry dock. They examined the hull, the hull plates, the room inside and out the hatches, the ventilator covers and everything. The condition of the deck was very

(Testimony of Joseph H. Johnson.)

good. The condition in March of 1952, was very good, just the same as it is today. I do not see much difference in it. It was very good. Today the deck is about the same as it was in May, 1951, and March, 1952. Perhaps there is quite a bit of rust on the deck now, but not in 1952 when I left in March of 1952. The engine and motors were carefully examined at that time. The entire equipment was examined at the same time when the load line was examined. I saw them do it. The same thing with respect to the smothering valves. I do not recall the type of examination that was made of the lifeboats in May, 1951. I don't think that there was one made then. It was not necessary. The time was not up for inspection. They are usually looked at around every Saturday at boat drill, when boat drill is caried out. It is the chief officer's job to see there is adequate water in the lifeboats. He usually puts the junior officer on that job to look at it. When a ship comes into port they usually renew the water and provisions. I would not say that there is quite a bit of rust on that ship any more than any other ship of her age. In fact I think she is pretty good. The steam pipe coverings are corroded quite a bit. That does not come into it at all. You do not require that only for regulations for discharging or loading. They do not come into the seaworthiness of the ship at all. I do not think that a ship that had not been touched for approximately six or seven weeks could accumulate a considerable amount of rust even though it is in port. The ship was in about the same

(Testimony of Joseph H. Johnson.)

condition when it arrived in Portland as it is now except for debris and dirt. You have electric chipping machines that take off the rust.

On Cross-Examination by Mr. Tanner the Witness Testified:

With respect to the 24 mattresses that were purchased in October, 1951, there were another 20 on the ship besides. 20 were sent ashore to be reconditioned. There are 44 mattresses on the ship. The mattresses were sufficient. 24 were sufficient for the deck and engine. 20 mattresses were sent ashore to be fumigated and re-covered.

On Redirect Examination by Mr. Krause the Witness Testified:

There were 20 mattresses sent ashore for reconditioning at the time the 24 new ones came aboard. There should be an invoice such as this one on the reconditioning. The laundry account should be there. We can get it from New York or London. I think it is aboard the ship.

CLARENCE S. MARVIN

a witness produced on behalf of respondent, SS Riviera, testified as follows:

Direct Examination

By Mr. Mosser:

I am a United States Government meat inspector employed in Portland. In an unofficial capacity I went aboard the SS Riviera to look at some meat that was in the vessel early in September of this year. It was on Sept. 10. The meat consisted principally of beef. There may have been some mutton also. As I recall there were some quarters of beef there. The meat as I saw it with respect to its fitness for human consumption, all I can say is that the meat looked all right. I made a very cursory examination, as I might say in our inspection we are not principally interested in condition or quality of meat as we board ships. It is to maintain the identity of this meat, establish from what foreign country, and we warn against it being brought ashore. As I say the meat on a very cursory examination looked all right. That is all I can say. I believe the meat came from Australia and that some of it was meat from India. I inspected both. I was not interested as to the quality. I say in my work we are not interested in quality or condition.

In Response to Questions Asked by the Court the Witness Testified:

I saw the meat that had been brought in from India. I am unable to answer truthfully whether the

(Testimony of Clarence S. Marvin.)

meat was beef or water buffalo. I would assume it was beef. To my knowledge I have not seen water buffalo meat. It looked like beef. It might be compared to perhaps a low grade or cutter cow beef, that would be my visual impression as I saw it. The Australian beef looked better in quality. With respect to the meat that came from India I would not say that there was too much or too little fat on the beef. On the basis of quality surely the Australian beef was of better quality. When meat darkens it may or may not affect its edibility. You have many conditions to contend with. The visual impression that I made does not in any sense or should not in any sense be comprehensive enough to say whether this beef is good or bad, because my official duties do not go into that part, and unofficially, as I did tell a man, I said "It looks all right," but to actually be able to tell in a condition like that—that the meat was in a refrigeration in which I would judge might be around 15 degrees, which we call a sharp chill box, no one would want to say under those conditions what the meat was until it was brought out and thoroughly defrosted and a visual inspection made. In my estimation I couldn't truthfully say as to its edibility.

CARL SLOAN

a witness produced by the respondent, SS Riviera, etc., after being duly sworn, testified on Direct Examination by Mr. Mosser as follows:

My name is Carl Sloan. I am Superintendent of shop repair at Albina Engine Works in Portland, Oregon. I supervised repair work on the SS Riviera since September 3, 1952. My instructions were oral and were from the port engineer, Mr. Bogdonas. The repairs were made from September 3, to September 9. The specifications for repairs were given to me orally and I wrote them down. They are contained in Respondent's Exhibit 13 consisting of six sheets. Some of the things are complete; some are not started and some are partially completed. Some of the things that were on Exhibit 13 were added later. The first seven items were drawn up on September 3, and the others were added through the week to September 9. The vessel was placed in drydock. Approximately 80 per cent of the work was complete. With respect to item 19 "lifeboats," new tanks were provided but they have not been installed yet. The damaged sections are still on the ship. I did not see the material that was removed after it was removed. Some areas were rusted. We stopped work on account of a dispute on the ship. They were working right up to the time the picket line appeared. The things that are on Exhibit 13 were the ones we were told about. We were not told about other things. I have worked on several vessels and I am familiar with the steam smothering system. Whether the

(Testimony of Carl Sloan.)

valves are closed by hand or with a tool I would say it depends on the individual. If he is a good mechanic and if he is going to close it tight he would use a tool so it wouldn't vibrate loose or wouldn't accidentally release steam. If he is not he would just screw them down hand tight and let them go. The valves are low pressure up to 125 pounds and can be a gate valve or it can be a globe valve or angle valve. The mechanism of the valves themselves are in most cases bronze. The repairs on the Riviera I would say were more extensive than usual. Some of the machinery was in a dismantled state at the time the work stoppage prevented us from going further with the work on the ship. The bilge, the ballast pump was still apart, the brick work had not been completed and there was some piping that was not in. A generator, I believe, and possibly two, was not put together. The rudder is not on the ship. It is on the dock. The bilge pump is called the bilge ballast pump and is used for pumping bilge and ballast overboard. It is not completely assembled yet. I would not say that leaving the machinery which I have described in a disassembled state would require further checking after leaving it for a period of six weeks or longer. It would not require anything unusual to my knowledge.

On Cross-Examination by Mr. Tanner the Witness Testified as Follows:

There is a master valve that brings the steam to the steam smothering lines. I don't think there are

(Testimony of Carl Sloan.)

any regulations covering that master valve to my knowledge. The pressure in the line will hold the valve open if it is put in properly. It all depends on which side of the valve you turn toward the pressure, whether the pressure helps open the valve or whether it keeps it closed. A gate valve simply blocks the flow of steam. It is a wedge-type valve of soft metal like bronze. I didn't say that you would need a mechanical device to keep them tight. I told Mr. Mosser that it was up to the man who closed the valve if he wished to tighten them with a wrench he can tighten them with a wrench. If the valve has been used for a while you get some foreign material in it, I think it is advisable to close it with a wrench, not because it was defective—because something is in it. I have had no seafaring experience at all. I have been in the ship repair business 22 years but I have never gone to sea. I do not know whether there is a regularly provided tool for opening valves on the steam smothering lines. I have never seen one for the small valves. If the valve is in good condition you would not need a tool to open or close it. It could be done by hand.

Redirect Examination by Mr. Mosser:

I have had no experience with valves. I have never gone to sea. I am only telling the history of the shipping business as I have read it and am informed that it does happen.

(Testimony of Carl Sloan.)

Examination by the Court:

Beginning with item No. 7 in Exhibit 13, the work was done in accordance with A.B.S. approved prints and is not completed until approved by A.B.S. surveyors. I do not know if a survey had been made prior to the time that I got on the ship. I put the specifications there because the American Bureau of Classifications representatives were present and all work was confirmed to their requirements. They have rules and regulations they publish in the book that we abide by on ship repair work. All the work we did was in accordance with approved standards. I had knowledge that the A.B.S. was going to make a survey of the ship and issue a certificate after I had completed the repairs. The port engineer gave me that information. The work that was completed was examined by representatives of the A.B.S.

Recross Examination by Mr. Tanner:

I would say that the work was 80 per cent complete at this time and it would require approximately three days to do the rest of it at the rate we were going. We were endeavoring to get it done at a set time. I do not recollect the date. We had regulated our crew so that it could be done within the time allotted which would be about three more days.

CHARLES CARSTEN

a witness produced by the respondent, SS Riviera etc., was duly sworn and testified as follows:

Direct Examination

By Mr. Mosser:

I am a surveyor for the American Bureau of Shipping. It is a classification society. If the owners wish to classify their ships with us we survey them and make recommendations to keep them up to certain minimum standards. It is to the shipowner's advantage in certain cases in obtaining cargoes and insurance. We have certain periodical surveys that are maintained in any class. After construction of the ship there are annual surveys and at approximately four-year intervals there are what we call special surveys that are more inclusive than the annual survey. I have recently done a survey job on the SS Riviera in Portland. It is a special survey, No. 2, which is the 8-year survey. That is even more inclusive than a four-year survey. If the ship is to maintain classification with the American Bureau it will have to meet the requirements. With respect to the instructions I received from the owners of the Riviera, I talked with the port engineer, Mr. Bogdonas, and he had indicated his intention of maintaining the ship in class and had co-operated with me in accomplishing work which was necessary under the Bureau rules. I don't recall the date I was first advised of the survey to be carried out in Portland, but I believe it was previous to the time the ship was placed on drydock. The 8-year inspection does not

(Testimony of Charles Carsten.)

cover the safety equipment on the ships, such as life-boats and life-saving gear. Generally it covers the hull, the means of maintaining the water-tight integrity of the ship, the structural soundness of the ship and the condition of the machinery, the boilers, and the only thing you might consider life-saving equipment, it does cover the fire apparatus, fire-fighting apparatus, but I had not surveyed the fire-fighting apparatus on this particular ship. The survey had been commenced at another port and a previous surveyor's report sent to me with a notation of what remained to be done to complete the survey. This is frequently done in connection with a special survey. I received in the course of business a report that part of this survey had been completed at another port for the Riviera. I do not recall what port it was. Exhibit 14 appears to be a copy of the report which I received in the ordinary course of covering the previous survey made on the SS Riviera. It was from this report that I determined an inspection of the fire-fighting equipment had been made at a previous port. The work I was doing in Portland did not cover the items that are in the report. The survey consisted mostly of opening up the various machinery and examining the various parts of the ship and making recommendations on the basis of personal observation. The port engineer generally has the contractor open the machinery up or drydock the ship and make it available for inspection. We inspect it and make recommendations and as the work is completed we inspect the completed work

(Testimony of Charles Carsten.)

and consider it satisfactory. We make a second inspection after the work has been completed to be sure that it conforms to the American Bureau of Standards. I would not say that we always make a re-examination. It depends on the particular item involved. For instance some things that you can see that they are under the process of being repaired at the time, and it would be satisfactory, for instance, painting something out or grinding in a valve, if it is in the hands of a competent workman. What I am trying to say is that we don't necessarily always go back a second time and look if we are fairly certain that the work is being put in straight and that it will be accomplished. If someone responsible is making the repairs I do not check every minor item, but possibly only some of the major ones. Then I certify that this vessel retains its class and that in my opinion the vessel is seaworthy. If there are exceptions to that it is so stated in the report.

Exhibit 14 was offered in evidence and after objection as to its competency was taken under advisement.

On Cross-Examination by Mr. Carney the Witness Testified:

The survey which I had set is called special survey No. 2 which is the hull and machinery survey. It is a test made when a ship goes into drydock and includes the bottom and the fittings. It does not cover the lifeboats. That is not a part of that survey. I do

(Testimony of Charles Carsten.)

not recall the date when I got the requisition to make the survey for the company. The request was handled through the office. When I first went to see the SS Riviera I cannot recall whether it was in drydock but I believe it was. I did see the ship when it was in drydock and I made an inspection then. I also made a further inspection when the ship came off drydock. I made recommendations for repairs. I do not have those or any other records with me. I recall some of the recommendations which I made. I recommended that the rudder be renewed; that one floor and back wall in the port boiler be renewed; that covering insulation in the fore and after sides of the boiler be renewed in part and that certain shell indents be repaired. The indents were in the hull of the vessel. I made recommendations that certain sea valves be repaired although at the time I can't remember which ones. I consider the steam smothering gear a part of the fire-fighting apparatus and I did not inspect it at all this time. I did not look at it. With respect to the fire-fighting equipment generally on American ships that is handled by the Coast Guard. On foreign ships we have on a few occasions demonstrated that it was operative and that the equipment was in sound condition. Whether a careful surveyor in testing the fire-fighting apparatus would actually put it into use and demonstrate it, would depend on what equipment it is. If there is any doubt about such things as water pressure or hoses that are under water pressure, they should be

(Testimony of Charles Carsten.)

put in use and water forced through them if there is any doubt about their condition.

With respect to the steam smothering gear, I would probably exercise the valves to do that. That is generally done by hand. I did not look at the steam smothering gear on the SS Riviera at all. Sometimes these surveys are conducted by starting in one port and continuing maybe in another port, and finally concluded at another port along the line. The survey was intended to be completed here according to the port engineer. He intended to complete it, and from the way the work was going it appeared that it would be completed here. I inspected the cofferdam personally. In the steam heating and return coils to the forward fuel oil tanks passing through the compartments, some were wasted, which is not an uncommon occurence on most Liberty ships. They were corroded, wasted away, until they were leaking. There could have been water in them but there was no water in them at the time I was in them. At the time I got into those cofferdams, repairs had already been begun on them but I did make recommendations for a little more extensive repairs.

With respect to the survey that was taken in New Orleans I believe it is stated in the survey I received that it was a special survey No. 2. It says on page 3 at the top of the page "To complete the Special Survey No. 2 on this vessel the following items remain to be dealt with." Special survey No. 2 takes care of the shell, the rudder, and stern frame and

(Testimony of Charles Carsten.)

the propeller. It takes care of the structure of the hull. It takes care of the machinery that propels the vessel, the main propelling machinery, but it does not take care of the life-saving equipment, machinery and equipment. It does not have to do with lifelines, life preservers or boats. Neither does it have anything to do with living conditions or the quarters of the crew. Nor does it have anything to do with the provisions which are carried on the vessel nor the maintenance of the equipment which has to do with the preparation of food on the vessel. I have not been engaged as a surveyor in Portland for a number of years. I have been a surveyor here since May of this year. I was a marine surveyor for the U. S. Maritime Administration from around the first of January of this year and that is my entire experience as a marine surveyor. Prior to that time I held a license as chief engineer. I have had that license since 1945.

On Examination by the Court the Witness Testified:

I would not say that if it required a wrench or some instrument to open a valve that I would regard that valve as needing repairs in order to bring it up to class. It has been my experience that frequently valves become jammed. I have closed valves by hand and have been unable to open them again without the use of a lever and have examined them and found nothing materially wrong with them. It is not possibly good engineering practice to close a

(Testimony of Charles Carsten.)

valve of that kind with a wrench, but in actual practice it is frequently done to make sure the valve is closed tightly and will remain so.

On Recross-Examination by Mr. Tanner the Witness Testified as Follows:

The type of valve that is generally used to control the steam that runs to the cabinet where the steam smothering valve is kept is generally a globe type valve. Gate valves are also made for pressure up to 600 lbs. and act the same as globe valves. If a globe valve is properly installed the pressure is on the bottom of the seat tending to open the valve. If a valve is closed tightly the pressure will have very little effect in opening it. The standard type valve in the particular location to which you have referred I believe would be branded a globe valve. If you use a contrivance for leverage to close the valve, and if you do not use care, you are liable to distort the seat of the valve or disc. From the manufacturer's standpoint he has made the valve in such a way with respect to the threads and the number of threads per inch and their location and their bushings that these steam valves are to be operated by hand, or should be.

On Redirect Examination by Mr. Krause the witness testified as follows:

The ease with which a valve can be opened and closed by hand depends on how tightly the screw is

(Testimony of Charles Carsten.)

turned down on the packing. If there is pressure in the line and the valve isn't turned down tight, there will be a leak. The tighter you screw the valve down the harder it is going to be to turn by hand.

THOMAS COWDEN

a witness produced on behalf of respondent SS Riviera, etc., after being duly sworn, testified as follows:

Direct Examination

By Mr. Krause:

I am the master of the Riviera and have been so employed since March 20, 1952. I was previously employed for five months during 1950 as chief officer. That is the extent of my employment on the vessel prior to March, 1952. I hold a British Master's license issued by the Board of Trade in Britain. The crew signed articles in my presence at Bremen, Germany, March, 20, while the vessel was in port. The contract signed by each individual man is Exhibit 7 and was signed before the ship sailed. Five copies were executed. I signed the original that went to the German Labor Office. Captain Johnson explained the articles while I was there when the crew signed. He was with me at that time. I was taking the ship over from Captain Johnson. He was going off as master. I signed the papers myself. I stated to the crew that the length of the voyage was from Bremen for a period of two years maximum. The voyage was to terminate on the vessel's return to the continent

(Testimony of Thomas Cowden.)

within two years. If the vessel should not be back at the end of two years the men had the option of being repatriated from wherever the vessel was, or if they wished to stay on they could stay on the vessel. They would be entitled to be sent back to the German port where they were engaged at the end of the two-year period. I have signed British articles many times. The crew always sign articles on all ships before making a foreign voyage. The maximum period is up to two years. The wage scales being paid are set up by the British Maritime Board. The wages were set by the Board of Trade together with the British Labor Unions. I do not know the union rules in America. The wages that were being paid were in accordance with the British agreements with the Board of Trade. In some cases they were higher than the agreed wage. That was the case with licensed officers as well as the men. The articles provide for certain food supplies to the crew during the voyage. I am not familiar with those requirements but the chiew steward is.

The quantities of food provided were above the minimum requirements. The officers of the vessel eat the same food that the men receive on the voyage. It came from the same galley and was cooked by the same men. On the voyage from India to Portland the food was normal. If you start in India where you can only get one class of meat that is the class of meat they have in India which is not as good as the class of meat we would store in America. That is all there is. I purchased some meat in India and I later

(Testimony of Thomas Cowden.)

purchased meat in Singapore. The Indian meat purchased was beef and mutton. I have never seen water buffalo and heard of water buffalo until we got to Portland. From experience in looking at meat in refrigerators in ships, it was just the same as any other meat, though of a lower quality. It looked like cow's to me. It was sold in India to me as beef. When the meat came aboard in India it was frozen. I learned during the voyage that some of the meat wasn't in proper condition. It was spoiled, although it came aboard frozen. When we came to use it after about three days after leaving port we ascertained that some of the meat was spoiled. I made a claim against the ship chandler over there that the meat had spoiled. I never gave instructions to anybody to serve spoiled meat on the ship. I gave instructions for the meat to be thrown over the side. I had no meat served to me that I thought was spoiled on this voyage. Some complaints were made by members of the crew that there were weevils. The cook testified that there were weevils in some cereals that he was required to use. I did not know of that. The first idea of that was on the 10th of September, the day they went on strike when the strike had already started. I never found any weevils or bugs in my cereal and I ate cooked cereal too. On voyages I have known and found that there were weevils and bugs in cereals. Most voyages I have been on of any length. It is the common practice to strain weevils out of the cereals and out of the flour on all types of ships. I couldn't say exactly how long it takes for weevils to

(Testimony of Thomas Cowden.)

develop in flour when you are in the tropics and in such climates as around India. I suppose about two months. If you keep it two months you are apt to have some weevils. The cereals that were served were in sealed packages. Most of them were smaller than 3 lb. packages. The flour was sacked and so was the rice. When the ship arrived at Portland some of the crew and officers reported to me that the food was unsatisfactory. Kratky was one of them. He is the man who died here in Portland. Mr. Berg reported to me that they thought the meat was not as it should be. He made that report on the voyage. He said he didn't think the beef was of good quality and that the men had thought it was bad. The cook didn't say to me that he had been ordered by anyone to serve spoiled meat. Kratky said the meat was bad and I informed him that I would get a surveyor down to look at the meat and let him know whether it was bad or not, but that my own opinion was that it was not bad. That was four days before we came into Portland. Peterson is the ship's cook. Berg made a complaint about the food on behalf of the firemen quite some time before the ship arrived in the Columbia River. He complained to me that the food was of poor quality. He was talking about the meat. All the kinds of meat we had received in Bombay, beef and mutton. Berg said to me that his men had asked him to come up to report to me that they thought the meat was of poor quality and I agreed with Berg that it was of poor quality but pointed out that I was eating it myself and it was

(Testimony of Thomas Cowden.)

the only quality of meat that could be obtained. It was first class quality Indian meat but that is as far as it goes. Later on at Singapore we bought some Australian beef. After we left Singapore the Indian beef was being served and Australian mutton was also served. Normally, when we get meat we use it in the rotation we get it. Even though I find that some of it was of poor quality, and the Bombay meat was of poor quality, and even that I had better beef from Australia, I still felt it necessary to get rid of the meat that I had purchased at Bombay before I used the other. I gave orders to the steward not to use the Australian meat until the meat purchased in Bombay had been used up. No other man made complaints about the quality of the food—just Kratky and Berg. On arrival in Portland I had an inspection made of the beef. The report made was that the Australian beef was all very good quality and fit for human consumption; the Indian beef was of poor quality but quite fit for human consumption. Mr. Marvin, the man who testified here, made that report. He is a government inspector but he can only give an oral report. He couldn't make a written report. I had looked at the meat myself in order to ascertain whether it was fit in my opinion for human consumption. When the vessel arrived in Portland her next voyage was to be back to India. It was to carry grain cargo from Portland to Bombay. When the vessel arrived here she did not have supplies for the return voyage to India. Up to the

(Testimony of Thomas Cowden.)

time of the sitdown strike no supplies had been brought aboard for the return voyage. I did have some supplies brought aboard for local use during the time the vessel was in port. There was a provisional order to the ship chandler for supplies for the return voyage but I told him not to bring it until such time as I told him to bring it before sailing. I get the requisition for supplies from the chief steward. He is a British subject and he speaks English. He made his requisition to me as to what he thought would be required. I had placed an order with the ship chandler.

The crew refused to obey my orders at 10 o'clock in the morning of Sept. 9. I was advised that they would not obey my orders by Mahmkopf and Goldsmith. Mahmkopf is a donkey man and Goldsmith is an able seaman. They came to my quarters and informed me. They handed me a note saying that they were on strike. That is the same note that was read in the record about their having been shanghaied. The second engineer, cook, bosun and galley boy did not go on strike on September 9. They obeyed orders until they went on strike September 11, but the strikers refused to obey orders. The 22 men that are here in court and are parties to this suit and the three that have been sent to the detention station in Seattle were all the members that participated in the refusal to obey my orders. None of the others outside those 25 disobeyed my orders. One of the men that I referred to as being in detention was a stowaway. His name was Howie. He had not signed

(Testimony of Thomas Cowden.)

on the vessel and he was not a member of the crew at all. Prior to 10 a.m. of September 9 there was chicken and eggs brought aboard the vessel here in Portland. The requisition which the chief steward gave for supplies shows what supplies were received. Prior to September 9 at 10 o'clock in the morning. There were requisitions for both food supplies and engine room supplies. Those requisitions are not complete. That was not all that we were going to take on this voyage. There were more supplies to come after that. I had not completed the order for supplies. I was the master of the vessel when she was at New Orleans. A No. 2 survey was conducted in that port. It is the survey by the American Bureau after the ship has been in service 8 years. I am familiar with the annual and the four-year surveys. The four-year survey is much more extensive and the eight-year survey is even more extensive. I received a report from the surveyor after he completed his survey. Exhibit No. 14 is the report of the survey which was carried out by the surveyor in New Orleans. It was sent to me from the American Bureau of Shipping. It is a report of the items in the No. 2 special survey which was carried out in New Orleans. There was a survey after the ship arrived in the Columbia River. This two-year special survey was being completed and the vessel was undergoing repairs prior to September 9 at 10 a.m. The repairs were ordered by the chief officer or the chief engineer, whoever's department the repairs were rquired in. The repairs required by the survey

(Testimony of Thomas Cowden.)

were to be completed in Portland before the vessel was to sail.

I examined the valves last night after the witness Anderson testified with respect to the steam smothering system and after he said he could not turn them by hand. Those valves are made of bronze. The wheel is of iron. Bronze to my knowledge does not rust. I was able to open all the valves. They were difficult to start because they had previously been hardened up, but once started you could turn them quite easily by hand, full open, and then shut them again. I think the valves had been tightened with a wheel spanner, but I do not know to my knowledge. That is part of the chief engineer's business. The valves that I have been talking about prevented steam and water from getting into the cargo spaces.

The lifeboats were examined prior to arrival in Portland with a view of ascertaining whether they needed repairs. We started their examination in Calcutta and carried on various times right through until we arrived in Portland. The repairs that were necessary for the lifeboats were ordered done by the Albina Engine and Marine Works. I had arranged with the port engineer to have the American Bureau of Surveyors come down to examine the lifeboats once the repairs had been completed on them. Supplies or new equipment for the lifeboats had been ordered but not prior to September 9 at 10:00 a.m. The repairs to the lifeboats were ordered after the difficulty began. I have examined the davits of

(Testimony of Thomas Cowden.)

the launching equipment of the lifeboats. The launching gear is in perfect order. I didn't try them personally. I was there when the chief engineer put one out yesterday morning himself. Nobody assisted him. It didn't appear to me that it took a great deal of effort. The 24 members of the crew refused to obey orders until they were put off the ship by court order which was on September 26. The only ones that did any work on the ship that I saw was Mr. Berg, the cook; the galley boy and the bosun, up until the time they went on strike on September 11, but other than that the men performed no work on the ship. They didn't bother with keeping their own quarters clean. I didn't go in their quarters. The only demands that were made on me other than what is contained in the paper that was delivered to me at 1:10 a.m. September 9 was that they demanded more money. They demanded more money two days before they refused to obey orders.

After the vessel arrived in Portland I paid money to members of the crew on account of their wages. I determined the amount by looking up their balance of wages to see what they had due them and as soon as they had it due I gave them what they had put in for. Overtime and leave pay is normally paid at the conclusion of the voyage. There had been a demand made by members of the crew to pay them overtime pay. After six months some of the men had considerable overtime and I let them draw quite a bit of their overtime. There are a few who

(Testimony of Thomas Cowden.)

have not drawn overtime. The members of the crew did ask for their overtime pay a few times throughout the voyage; at Bombay there was a conference between the German Consul and representatives of the men. They had been complaining to him and I had a discussion with him and said that if the overtime became as high as the men thought it was going to become that I would see about giving them a percentage of it as long as their conduct was satisfactory. I agreed with him to do that. Some of the advances I made in Portland in some cases went into overtime pay. They were not entitled to all of their money paid to them at any time in the Port of Portland. The men did not complain about the insufficient quantity of food. Nothing was said to me. I never heard about a demand that the men be given bread and preserves and various other things. With respect to the practice aboard ship about putting out food in the evening after meal hours, the men received bread and so forth daily and their preserves weekly; their butter daily. There was food for them to eat at off hours outside the regular meal hours. That consisted of bread, butter and preserves. No one ever made a demand on me either for different or more of that luncheon food.

On Examination by the Court the Witness Testified as Follows:

When the ship was quite aways from Portland I talked to Berg about the quality of the meat. This

(Testimony of Thomas Cowden.)

talk with Berg was before we took on the 500 lbs. of Australian beef. I was four days out from Portland when I talked to Kratky but after I talked to Berg about the poor quality of the meat I purchased this Australian beef and mutton, but in spite of the fact that I had bought this Australian beef and mutton and had it on board, I gave the steward instructions not to use it until he had exhausted all the Bombay beef. There was nothing wrong with the meat except that it was Indian meat. I recall the testimony of the bosun to the effect that some of the tanks on the lifeboats were disconnected during the greater part of the voyage and that testimony is not correct. They were connected. With respect to the amount of time the bosun and the crew members devoted to the repair of the lifeboats on the trip to Portland, there were two members of the crew on the lifeboats all the time the vessel was in Calcutta from the 23rd of June to the 24th of July. The third officer is in the boat periodically every fortnight inspecting the gear and seeing that it is in order. I talked about the question of food with representatives of the crew like Mr. Kaiser, who, I understand, was the ship's delegate. I never discussed food with Mr. Kaiser. I discussed the food situation with the chief steward. After the vessel arrived in port here the men did not make a demand on me for better food prior to the time they went on strike. The steward did not tell me the men had made a complaint. It was my opinion that the meat that was brought on board at Bombay

(Testimony of Thomas Cowden.)

was of poor quality. It is true that some of this meat, in addition to being of poor quality, was inedible. With respect to what was wrong with the meat, it was bad. There was 100 lbs. of liver and 100 lbs. of ox tail and 80 pounds of fat thrown overboard. I was on board the ship when the Bombay meat was delivered. It is not a fact that the meat was delivered fresh at 7:00 o'clock in the morning. The steward had been receiving the meat.

"Q. Captain, were you not on board the ship when Mr. Carney and Mr. Tanner and I were talking, and the steward was there also, and as we were looking over that meat the steward told us that that meat had been delivered fresh at Bombay?

"A. While we were in Bombay the port stores meat was being delivered fresh, but the sea stock was delivered frozen, the meat we took out of Bombay, to my knowledge."

The meat that was used during the harbor time came on at 7:00 o'clock in the morning and it was delivered fresh but the meat that was taken on board for the voyage was frozen. I ordered the ship chandler to bring it down frozen.

On Redirect Examination by Mr. Krause the Witness Testified:

I have a copy of the charter for the voyage that the ship was intending to make. Under this charter I was to make a voyage to India with grain. I was informed by the agent that it would be Bombay. The charter just provides for a port in India or

(Testimony of Thomas Cowden.)

West Coast of India. It was when I arrived in port that I was advised that it would be Bombay. It would have taken approximately 50 days after the repairs were completed to have made the voyage to Bombay at this time of the year, including the loading and discharge. The shortest time that it could have been done during September and October of this year I would say would be 45 to 55 days.

The grain capacity of this vessel is 9,400 tons. I knew on September 9 prior to 10:00 o'clock, that the repairs would be completed and the ship ready to load cargo on September 11 or 12. Some of the repairs could be made while loading if they had not been held up. I would not say the repairs would be completed by the 11th but the repairs necessary to allow us to go ahead and load would have been completed at that time. On September 9 there was about six hours work left for lining the ship for bulk grain, that is, putting the materials in for bulk grain, the shifting boards.

On Cross-Examination by Mr. Carney the Witness Testified:

The Riviera has a 9,400 ton capacity for grain cargo. The charter did not provide that I carry a minimum of 10,120 tons. The minimum is 8,000 tons. There is an 8,280 ton minimum and a 10,120 maximum cargo capacity. We carried a similar cargo of grain from New Orleans. The charter was very similar. On that voyage I did not carry 10,000 tons.

(Testimony of Thomas Cowden.)

It is correct that we had grain in the deep tanks and we ran short of water on the trip. Those tanks are not used to carry fresh water. It would take from 45 to 55 days to carry out the charter. It is correct that the charter provides for the delivery of a cargo of grain to a port in India and as far as the charter is concerned I could go where I pleased. It is the same kind of charter I had when I left New Orleans, on the 19th of April. I arrived back in the United States September 3. I did not know when I got out there that I would get another charter for coal to take to Japan. After leaving Portland to go to the Orient I cannot estimate how long it would be until I got back. I picked up some beef in Bombay and at Singapore. The Indian beef was of a poorer grade than could be gotten in the United States. We did not pick up any provisions in New Orleans. I picked them up in Germany. The only provisions I picked up in New Orleans were harbor stores, vegetables, eggs, etc. The vessel has a large capacity to carry foodstuffs. Prior to September 9 only two members of the crew came to me and complained with respect to the food and working conditions on the vessel. Mr. Klunker came to my room complaining about the food. He was second assistant engineer. He was with Mr. Berg and the three of them came up. Mr. Berg was speaking on behalf of his engine room staff and his firemen. I have no knowledge of Mr. Klunker coming to my room shortly after I left Singapore. I don't remember that. Mr. Goldsmith and Mr.

(Testimony of Thomas Cowd[illegible])

Symonds, the two English seamen that I picked up in Japan, did not complain to me about the food shortly after coming on the vessel. They didn't complain about the accommodations when they joined the ship. They were only too glad to get on the ship. They wanted to have their seamen's books back when they were still in port in Japan and get off the vessel because I would not give them money that they had not earned. That was when they wanted their books back in Japan. They didn't ask for $3.00 so they could buy toilet articles. I have no idea what they asked. A person could not ask for money when he had only worked two days on the ship. If so, it is a different ship than I was ever on. When I refused to give them money they asked to have their seamen's papers back, and I refused them.

After we left the court here yesterday I went back aboard the ship and tried the steam smothering valves. I was present with you and with the judge on the vessel back by the No. 4 hatch when you called the judge's attention to those valves. I don't remember seeing you try to turn them. I remember you saying to me that they could not be turned and you told me that at that time. I did not try them at that time. I had no doubt about whether they could be turned. I could trust my chief engineer. He looks after that. It is the junior third officer who looks after the lifeboats every two weeks. Naturally I couldn't do it. I had to trust my junior officer. I did not personally inspect the boats

(Testimony of Thomas Cowden.)

nor did I supervise them and watch that work while it was being done in Calcutta. That is what the chief officer is for. They work on the boats 8 hours a day for four weeks. They did no other duties. That is what I saw with my own eyes. In fact, I saw more than two working on the boats on several days. I sailed on the Riviera as chief officer a long time ago and then in March I came back as master and have been master since March of 1952. I have never had occasion to place any of the boats in the water during that time. None of the boats have been lowered into the water. It was reported to me that the fire-fighting equipment was tested in New Orleans under a survey. I was not present when any tests were being conducted. I was not aboard the ship all the time it was in New Orleans. I have got to go to the agent sometimes. I don't stay aboard the ship all day. I got more work than just standing watching them test all the apparatus and I didn't observe the test being performed on the apparatus. When the men stopped working Sept. 9 there was about six hours more work to be done on the cargo lining. That was the stevedore's estimate. They told me it would take about three days of loading after the repairs were completed. When they stopped working we were not ready to start loading. I still had two days repairs to complete. There was about six hours work on cargo lining in order to place grain in the vessel and it was my plan if nothing happened with respect to the crew to go ahead and do that. I think it would have been

(Testimony of Thomas Cowden.)

a little more than three or four days before we could have left the Columbia River. I should say five or six days. There were two days of repair work that had to be completed before the cargo work could start and there were other repairs that had to be completed that could be carried out while the ship was being loaded. The officers ate the same food as the crew. The only difference is that the butter is put on the table instead of being handed out to each officer, so much butter each week. The butter is put in the salon by the table for the use of the officers. If more butter is needed more is put there. The crew gets an allowance of butter, so, for instance, from the steward. One of their members goes and takes it from the steward. Most crews take their ration for the whole crew and the master. Some crews go on together and take their own personnel. So far as I know this crew took the portion for the whole lot together. It is entirely optional what they do. I think the crew is issued the cheese the same as far as I know. They made no complaint to me about it. The officers received crackers and cheese and things like that. During this trip I arranged to have a hot plate with coffee and a few things like that put in my own cabin. I also had the steward send eggs and things like that to me. With respect to night rations for the crew the steward issues them with the stores, with the bread and preserves, etc., and that is what they have with tea, coffee and anything else they want there, but there is no meal served to them. Sandwiches were

(Testimony of Thomas Cowden.)

prepared for the engineers and the officers. I am referring to the chief engineer and his assistants. I think the preserves were put out weekly. Bread was put out daily. I don't know what time of day. It was during the daytime.

It was Captain Johnson who was present to explain to the crew the articles when they signed. They were signed in the salon. The articles were laid out on the table. When the men came in they would sit down and sign the articles. Then the next man would come and that is how the crew was signed on. The articles were not posted on the ship. They were not posted at all. That is not usually done on a Liberian ship. It is done on British ships with a special form. The articles were not posted but there is a special form issued by the Board of Trade which is posted on the ship. The men signed Liberian articles under British conditions. It says in the front of the articles British Maritime Board rules and regulations shall be complied with relating to wages and hours and such things. It is on the first page in the front. The matter of posting of articles would be determined by Liberian law, not by British law. With respect to what the articles say about their being posted, I have not read it. I have never seen any ship where the articles were posted. As I say, there is an accompanying sheet on the British ships. I don't know what they do on American ships. Certainly none on Liberian ships. The whole crew was in the officers' salon at the time they were signing articles, including the officers. I

(Testimony of Thomas Cowden.)

didn't count them. Most of them were there. Each one coming down took his turn to sign his name as he could. The articles were laid out on the table. I think the chief engineer, who speaks German, interpreted the articles to the German members. He explained the articles as the crew were standing there in a group. Quite a few there asked questions as they were signing them and then he answered them in German. If he didn't know the answer, he asked either Cap. Johnson or myself, and the answer was translated into German. The other contracts having to do with German regulations were signed after signing the articles. Some of the men signed on one day; some of the men signed on the next. Some of them signed the German contract directly after signing the articles and in some cases they were signed before the articles. It was the same deal with respect to those who signed on the 21st. The period of the articles was for two years maximum. It was my understanding that if the ship went from Breman, say, to Rotterdam and decided to pay off the ship at Rotterdam, those men had to be paid one month's wages instead of three days. That is why there is a provision there with respect to a minimum of 30 days. There is nothing about a 30-day minimum in the large articles of agreement. That provision is in the German contract to prevent exploitation of German citizens sailing on foreign ships. It was to avoid German sailors being exploited under British articles. In the note I received on September 9 from the members of the

(Testimony of Thomas Cowden.)

crew they demanded their pay and their passage home. I didn't pay them the money, neither the amount they had due nor their passage home. After September 9 the feeding on the vessel stopped. They stopped serving whenever the strike came on. I ordered the men to leave the vessel. I had received on the vessel port stores here in Portland and those stores were kept in the store rooms which we saw on the ship yesterday. In addition to those stores there had been a requisition put in for what is called sea stores. She would be provisioned for the trip from Portland to Singapore and then I expected to pick up some more food at Singapore. I only intended to take on enough food to get from here to Singapore. After the men quit working on September 9 people came aboard seeking information about the strike. Newspaper photographers came aboard. I didn't allow them to take any pictures. I think this was September 9. The reason I told them to get off the ship was the stevedores were still working in the holds slinging timber with derricks. I told them to go on the dock if any of them wanted to be interviewed they could go there in case they got injured aboard the ship where the stevedores were working; that was the reason. This was on the morning of September 9. This was the day the photographers came aboard. With respect to photographs taken aboard the Riviera around the 8th or 9th, I saw photographs in the paper that were taken without my permission or knowledge.

(Testimony of Thomas Cowden.)

I didn't know they were being taken until I saw them in the paper. Exhibit No. 1 is a photograph I saw in the paper which I think you call bootleg or blackleg photograph. I am not sure. But it is one that I saw in the paper. I think it was two or three days after the men stopped working. Exhibit No. 1 shows the interior of the ice box: It depicts the fish room. It is not as it appeared on September 9. I cannot say when it appeared like that. It was two or three days after the strike. The pickets would not let the repair people on board to repair it and I had to shift the meat from the meat room into the fish room as that was working properly. The meat room by that time was out of order. The fish room is smaller. It is the one we saw on the ship yesterday. You can see the box of fish here in the photograph. That is where the meat was yesterday. Yesterday there was more meat in the fish box than shown in the photograph. The photograph was taken while the transfer was going on. I can't remember exactly when. It was two or three days after the 9th.

I recognize all the photographs and what they show. They show the conditions as they were about September 9 as far as photographs can show.

On Redirect Examination by Mr. Krause the Witness Testified:

With respect to the condition of the mattresses in the crew's quarters, some of them were fairly dirty owing to the fact that they had been dragged

(Testimony of Thomas Cowden.)

on deck during the hot weather. They were the mattresses that were on the ship when we came on. The crew had placed them on deck in the hot climates. The vessel is an oil burning vessel. She had carried a cargo of coal just prior to the last voyage to India from India to Japan. It was during part of that time and during the time from New Orleans to Bombay and from Bombay to Calcutta that the mattresses were carried out on deck. They are the same type of mattresses as are on other vessels. The ones that were taken out on deck were dirty and the ones that had not were quite clean.

During the voyage from New Orleans to India and then to Japan we would lose men at times and we signed different ones on. Some of them were hospitalized, and some deserted or left the ship. Desertions and illness required the men being taken off the ship. I cannot say offhand the total number of men that I had in the crew at any time. The articles would show it. There were nine licensed men in the deck department and I am required to have nine. The requirements I refer to are my own. When the vessel is under way the seamen and the firemen stand on watch 8 hours a day, then they come in and do overtime. Those 8 hours are split into two four-hour watches. Outside of the licensed men two men are required, the fireman and the donkey man. The oiler is the donkey man. There are two in the deck department that are not licensed. One is at the wheel and one a stand-by. With respect to the number considered necessary on the ship I

(Testimony of Thomas Cowden.)

was never below nine in the deck department. When the ship came into Portland we had five less men than were signed on at Bremen. The men that were short was the fifth engineer, a fireman, two A.B. sailors and a carpenter was also missing. The men that do not stand watches would take work from 7:00 in the morning until 5:00 at night, 8 hours, less meal time. They had nothing to do with the navigation of the ship. They clean, paint and scrape rust and things like that. In the engine department if there are more than six unlicensed men there, they also go on day work. When we are short men it has no effect on the navigation of the vessel. It had a detrimental effect on the upkeep of the vessel. We cannot maintain the vessel in the same shape when we are short-handed. When I was in ports in the Orient I endeavored to take on all the men that I could find that were available. When we were short-handed it required the rest of the men to do a bit more work on overtime. The men performed their regular hours and were then required to do some overtime work on which they got overtime pay. I didn't require a person to work overtime beyond 12 hours. I have on occasions had the men work four hours overtime after their 8 hours normal duty, if required, but not anything over that. Anything over that was entirely voluntary if they wanted to work. Some of the men asked to work more overtime than that. Quite a number of them did. I could not say what was the largest number of overtime hours that anybody in the crew had during any one month.

(Testimony of Thomas Cowden.)

The highest overtime on the ship is the bosun who got, I think, about 380 hours in six months. He asked for overtime in excess of 12 hours which made about 60 additional overtime hours per month. None of the men complained about operating the vessel with a short crew. The first time I learned the men were dissatisfied because of the fact that they claimed I did not have a full crew was just now. I intended to supplement the crew in Portland. I had already made inquire in Portland about men and they were trying to arrange for men to be sent over from New York to supplement the crew. I didn't call for SUP men. I interviewed two or three men locally here but I didn't think they would be much good aboard the ship.

On Recross-Examination by Mr. Tanner the Witness Testified:

While we were aboard the ship yesterday we were looking at the ship's stores in an oatmeal package. There were some teeth marks in the package. I heard the steward tell you that those marks were made by the teeth of a cat. I first saw the teeth marks on that package yesterday when I was over there. It certainly looked like a cat had made them. I have never seen rats aboard the ship. I had an inspector aboard looking for them. I never saw any of them or any signs of them. The package was an ice cream mixture at the time for the making of ice cream. I never saw a rat on the ship until right then. There were no rats on the ship.

THOMAS COWDEN

was recalled and gave the following testimony:

Redirect Examination

By Mr. Krause:

I was captain of the Riviera about the 7th or 8th of September, 1952. At about 3:00 o'clock in the morning on one or the other of those two days someone came aboard the ship and called me. One of them was a man named Cochrane. I think there were four or five in the party. They came to my room where I was sleeping and awakened me. It was on Monday morning prior to September 9. I think the spokesman of the group was Cochrane. They wanted me to come down to the crew's quarters to speak with them and the crew concerning the wages and conditions aboard the ship. I did not go down. I told them to get off the ship and they went. I followed them down until they went off the ship down the gangway. I saw Mr. Cochrane Sunday morning in the mess room of the crew, the day before he came aboard the ship to awaken me. On September 7, Sunday morning, I saw Mr. Cochrane in the crew's mess room. He was talking to the crew taking notes on a pad. He asked me about the articles and I said if he wanted to speak to me to come up to my office, which he did. I then asked him who he was and what he was. He said his name was Cochrane and that he was a member of the Sailors Union, a delegate of one of the ships that was lying ahead of us at that berth. The ship was

(Testimony of Thomas Cowden.)

the Cotton State. I did not show him the articles. I told him that we had nothing whatsoever to do with American seamen's unions and told him to leave the ship. At that time the members of the crew were in the mess room when he asked to see me about the articles.

(It was then agreed between counsel that the ship, Cotton State, on which Cochrane worked and was a delegate, was an NMU ship as distinguished from a SUP ship.)

On Further Redirect Examination by Mr. Krause the Witness Testified:

I saw Cochrane on several occasions talking to the crew while they were picketing the ship, but I had no further discussions with him.

(A motion was then made to strike the entire testimony which Cowden had given with respect to his conversation with Cochrane. Motion was taken under advisement.)

WILLIAM E. BENZ

a witness called on behalf of the respondent, SS Riviera, was duly sworn and testified as follows:

Direct Examination

By Mr. Krause:

My name is William E. Benz and I live at 10120 S.E. Bell Road in Portland, Oregon. I am a seaman and I am now port agent for the Sailors' Union of

(Testimony of William E. Benz.)

the Pacific in the Port of Portland. I was elected to that position by the membership of the Sailors' Union. The Sailors' Union of the Pacific is a labor organization for seamen organized on March 4, 1885. The officers consist of a secretary-treasurer, who is Harry Lundeberg, San Francisco. Harry Johnson is Assistant Secretary. The organization does not have a president. The other officers are three patrolmen in San Francisco, a dispatcher and engine and stewards' departments. That is in San Francisco. The patrolmen are members of the union and elected officials. The Sailors' Union has a constitution and bylaws. We do not have a Board of Trustees or Board of Directors nor an executive committee. The only group we have governing the Sailors' Union besides the membership is a building corporation which is five elected men. There are five trustees in that corporation. Otherwise the action of the Sailors' Union is governed by the membership. It enters into contracts with certain steamship companies under the name of Sailors' Union of the Pacific. I do not get paid by check. I handle the finances in this branch. The bills are submitted each week to an auditing committee and they are then paid and I send the balance of the money to headquarters. I put money in the bank here in Portland. The Sailors' Union does not have a bank account here. I have a bank account. Sometimes I have Sailors' Union money in my bank account, if I feel it is safer there until I am to remit to headquarters, which is each week. I send money

(Testimony of William E. Benz.)

down there each week. The Sailors' Union has a bank account in its own name in San Francisco. I suppose the officers of the union are authorized to sign checks on that account. At any rate they do. The union owns real estate and they own an office building in the City of San Francisco. We rent a hiring hall here. We have a three-year lease which is in the name of the Sailors' Union of the Pacific. We have between seven and eight thousand members. I suppose they are residents of many states and foreign countries, too, I don't know. I do not know the approximate value of money and property that the union possesses. I couldn't say. I have seen financial statements but I don't know what the property is.

The International Transport Workers Federation is an international union of all the unions that are not communist controlled that has to do with transportation. It is a federation of unions. It has a membership of individuals. I am a member of the Sailors' Union of the Pacific and, as I understand it, all of us are members of the International Transport Workers.

(Whereupon at the suggestion of the court Mr. Tanner, as counsel for the libelants, stated that he understood the Transport Workers was a federation of various unions in various countries where the particular union was not communist controlled. It has excluded certain groups that it did not want to affiliate with. It is a federation of voluntary associations whose

(Testimony of William E. Benz.)

members are engaged in the transport business and it has no members excepting those members of the various unions that are affiliated with it. The individual members do not pay dues to the International Federation but it is maintained by a sort of a per capita tax from the various groups that make up the federation.)

In Response to Further Interrogation by Mr. Krause the Witness Testified:

The International Transport Workers negotiate labor contracts all over the world. I know they do in England, they do in New York or some of these foreign ships such as the flag this ship is now flying. They have one agreement to my knowledge on a ship called Norpalma, I believe it is. It is a Liberian flag ship. The agreement was negotiated by Willie Dorchain with the International Transport Federation in New York. I don't know whether the International Transport Federation have any seamen other than those that are members of the affiliated unions. I don't know much about their affairs. I am an officer or official of the International in a sense that I am a member of the Federation and my union pays so much per capita tax which is the same thing as paying dues. I am not an officer or official of the International Transport Workers.

I did not approach any representative of the Riviera with a view of making a contract with

(Testimony of William E. Benz.)

them. I have no knowledge of a telephone conversation on or about Sept. 11 with Mr. Mosser about the terms and conditions of a contract covering the crew of the Riviera. I got many calls there the first two weeks that this trouble started. I don't remember each of them. I was approached by some people that said over the phone they represented the Riviera on several occasions, but I don't remember their names or who they were. I didn't tell them what my demands were on the Riviera. I had no demands. I made no demands on anyone who said he was a representative of the Riviera or the owners of the Riviera. There was a man called me as I remember by the name of Masters or Marsters, or something like that, and he asked me if he could see me within an hour, and I said, yes, I will be here in the hall and he said he wanted me to try to settle this dispute on the Riviera which I had just gotten wind of that same day. I have forgotten which day it was but at any rate I never saw the man. He didn't come in. He said he was coming to my office in an hour and I have never seen him. I didn't tell Mr. Mosser after he told me that he was the attorney representing the owners of the Riviera that our demands were the Makiki agreement. I told someone over the phone that said he was representing the company that that would be a sensible thing to go by if he wanted to settle the beef with the men. I advised him; I didn't tell him that but I don't remember who he was, whether Mosser or who it was. I thought the Makiki agreement would

(Testimony of William E. Benz.)

be a sensible basis of settlement. Exhibit 16 is a copy of that agreement.

It was received in evidence.

The first contact I had with any of the members of the crew of the Riviera was over a week end, if I remember right, around the 11th or 12th of September. They came to the hall asking us for help. I knew who the men were the following Monday. I believe it was on Saturday when they came in, Saturday or Sunday, and they came again on Monday. There were four of them. One was Kaiser, and Symonds and I don't remember the name of the other two. I did not go aboard the Riviera at any time until about one or two days after the crew were locked out. I went up the gangway there and looked over the ship, went around on the deck one or two days after they were removed from the vessel. I didn't send any representative aboard the vessel while the crew was still on the vessel. I did not hand Kaiser and Symonds and the other two men in my office any of the Makiki leaflets. I don't remember who gave them to them. There were some in the hall where everybody could look at them if they wanted to. I gave them the blue cards on Monday, I think. It was the Monday following the strike, I am pretty sure, either the 14th or 15th.

I did nothing by way of negotiating with the owners of the Riviera. I don't know whether Mr. Tanner was authorized to enter into negotiations with the representatives of the ship. He is the attorney for this crew and what he had to do with

(Testimony of William E. Benz.)

the crew I don't know. So far as I know the pickets who were placed at the vessel prior to September 26 were placed there by the crew. They were arranged for by the crew before the 26th. The crew is not doing the picketing there now for they are in jail. They authorized me to arrange for picketing if I could. They have not contacted the men who are picketing down there but they have authorized other seamen to get whoever they could to carry on the fight for them. Several sailors, including myself, arranged to get the pickets down there and got these men to do the picketing.

So far as I know no one is paying the pickets. The crew has no money. The Sailors' Union has not paid them, I have loaned them the use of my car to take some that didn't have transportation down there but I have never paid them a cent. I have not undertaken to see that they are paid for their time. Neither myself nor the Sailors' Union of the Pacific have obligated themselves so far as I know to pay a dime to these men who are picketing down there. Some of the pickets have permits in the Sailors' Union, they are not members. They work on working permits until they get in the sea-time to get a rating or become a member. It takes 30 months sea-time to become a member of the Sailors' Union. I cannot say whether they are all permit men or not. I do not know who are doing the picketing. I know some of them that has picketed and stood watch down there. There are

(Testimony of William E. Benz.)

seamen in and around the hall every day, hundreds of them. Different men come down there and picket. They are not the same ones all the time, necessarily. They change around. To my knowledge no regular member of the SUP have picketed down there.

I do not know who is in charge of the picketing at the present time. I am not in charge of it. I can find out by going down to Swan Island. I would have to ask the pickets. I imagine the crew of the ship is actually in charge. They are the ones that are the employer of the pickets. They are the ones that the pickets are trying to help out, help them get their money in this beef. I do not know who is in charge of the pickets down there. When the picketing started on the 26th of September some of the fellows hanging around the hall there on the beach took an active interest in it, but I don't know for sure who arranged for the picketing on September 26. We had a special meeting the 10th of October. We went on record to help this crew out until they have won their beef and we adopted a resolution. The crew talked to me about that. We adopted that resolution but it doesn't mean anything until all our affiliates and the rest of the Sailors' Union adopt it. I imagine that the rest of the affiliates have adopted the resolution. I have not got all the minutes in yet from headquarters and the branches. The resolution has been presented since this meeting. We are only a branch of the Sailors' Union and can adopt it here, but it has to be passed upon by the rest of the membership to

(Testimony of William E. Benz.)

make it legal. Copies of the resolution were sent to other SUP branches. I am the same William E. Benz that made an affidavit under date of September 17, 1952, in the case entitled Compania Naviera Hidalgo, S.A., v. Sailors' Union of the Pacific, ITF, et al., filed in the Circuit Court of the State of Oregon.

(The affidavit was shown to the witness.)

And the statement contained on line 20 to the effect that a dispute has arisen between the owners and operators of the vessel is a correct statement. And the statement that the Sailors' Union has a grievance against the ship is a correct statement. We were not picketing the ship ourselves. We have sympathy for these men and we have an active interest in it. We are members of the ITF and are under the same international federation as the seamen aboard this ship. We have a common interest with these seamen to help them. It is not necessary for us to take an active part in it because the crew themselves were picketing the ship. However, they did come to me and seek advice and they asked for help to get fed and stuff like that. I advised them that I didn't think it was right for them being forced to live under such conditions, to work for wages that they told me about. I thought they should have better and I thought that they should if they could quit the ship be allowed to get their money, what little they had coming. I don't know how to explain it. Seamen, as a rule, of all nationali-

(Testimony of William E. Benz.)

ties help each other and always did. That is about all the advice I gave them. I might not have said it in the exact words, that is the whole structure of it. I didn't tell them not to work, I didn't tell them not to do anything or do anything. They asked me my opinion. They asked me for help. I thought the wages they were getting was very poor. The statement in the affidavit that the seamen on the vessel authorized the Sailors' Union of the Pacific and the ITF. to act as their collective bargaining agent to secure for them better working conditions and higher wages is correct and that occurred after they signed the pledge cards.

I have discussed with Mr. Lundeberg the picketing of the ship since the middle of September. I got my knowledge of the picketing from the crew. They told me they had started picketing about the 9th. I believe I discussed that with Mr. Lundeberg some time the following week. Mr. Lundeberg told me to make sure that everything was in order; that these men had a just grievance and to make sure to be right about everything. Mr. Lundeberg asked me approximately what the wages were. He said, do you know what they are. I said, I don't know exactly, and he said, approximately, and I told him what I thought they approximately were. At that time we did not know what the wages were. I didn't know what they were myself exactly. We were very concerned about the ship being unsafe. The rusty lifeboats and so on. Mr. Lundeberg didn't tell me anything about what wages I was to demand of the

(Testimony of William Benz.)

owners of the Riviera. He didn't say anything about the Makiki agreement or the Makiki wage scale.

I do not know whether I was called by Mr. McGraw of the General Steamship Corporation and asked what the Sailors' Union was demanding. I called for Mr. McGraw one time but I couldn't get ahold of him. I got ahold of Driscoll and I tried to find out about another Liberian ship, but I don't recall taking to McGraw about the Riviera.

The preparation of the signs that are posted down at the ship right now were arranged for by the fellows that are picketing. They are ITF picket signs. I don't know what you mean by who authorized the printing of them. If you want a sign made you just go to a sign painting company and ask them to print it for you. Anybody can do that. I don't know what you mean by authorize. I don't know who did it. I don't know who paid for the signs. The Sailors' Union did not pay for them. I didn't instruct the persons to have the signs printed.

R. T. Williams is another official of the Sailors' Union here in Portland. He is patrolman. There are no others.

In Response to Interrogatories Propounded by the Court the Witness Testified:

I was not a delegate to the Portland Central Labor Council, the SUP delegate is a man named Philip Pino. He is not an officer of the union. While he is ashore he acts as a delegate and when he ships out we get another. I do not believe he was delegate

(Testimony of William Benz.)

during the month of September. The delegate of the Sailors' Union was making reports to the Central Labor Council during the month of September, but if I remember right, Philip Pino was on a ship and I don't know when he got off. I was not in the Central Labor Council. I helped prepare resolutions that were introduced at the Central Labor Council.

HANS KUEHL

a witness, produced on behalf of respondent, SS Riviera, after being duly sworn, testified as follows:

Direct Examination

By Mr. Mosser:

I am the chief engineer of the SS Riviera. I joined the ship in September of last year. I hold a license as chief engineer. My license is for every country. The German licenses are just the same as the chief license in America, in Great Britain or in any other seagoing nation. During the voyage it is part of the chief engineer's duty to regularly check the steam smothering equipment aboard the ship. If you have a cargo in the ship, say a cargo of wheat, you never go and open the steam smothering valve because you would be afraid of damaging the cargo. You can do it only if the ship has no cargo. But when there was no cargo on the Riviera I did check the steam smothering valves on the ship. During the voyage that commenced in March of this year up until September of this year the valves were

(Testimony of Hans Kuehl.)

in proper working order at every time when they were checked. You can open each valve except the master valve by hand. The master valve is set so tight that it will not leak steam to damage the cargo when the pressure on the deck steam line is connected with the steam smothering line. You have to close the master valve tight. We need a wheel spanner to close the master valve. The spanner is used in opening and closing the valves. For opening the small valves which are for the 'tween decks or for the bottom deck you can open by hand. I have not served on other Liberty type ships.

(The witness was shown Exhibit 16, a Makiki leaflet.)

I received one of these from the 4th engineer when I came from shore on board. It was on Tuesday, I think it was Wednesday, a day or two days after the strike. If the strike started on the 9th it would, to the best of my recollection, have happened on the 10th when I returned to the ship. It was in the afternoon when I received it from Mr. Williams, the 4th engineer. I cannot say that I saw it in the hands of any of the crew but Mr. Williams and Mr. Mahnkopf had it in their pockets because they gave it to me, I asked for it. It was just this paper. I had no discussion with anyone in my department with reference to that leaflet. Before September 9 I talked with members of the crew about going on strike or about the possibility of a strike. I can't remember the day. No, it was later, it was

(Testimony of Hans Kuehl.)

after the 9th. I had a conversation with members of the crew who were on strike. They told me they were on strike and we were talking together. They said the reasons they gave was stated in this paper that they gave me, that they were shanghaied, and about the food and about the bad mattresses and about forcing the stowaway for working 16 hours, something like that. That was on the piece of paper. It was after the strike at the time we were talking about better wages. Before the strike no member of the crew talked to me about the fact that the food was bad and the lifeboats were bad and the steam smothering system was bad also. Nobody talked to me about these things, only sometimes it was just talk. Nobody come up to tell me it was so and so but it was spoken every time that the food was bad, but it was the meaning that this was only the result of bad cooking from the cooks. They were just complaining about the cooking so I understand it. I am German and speak German so I could understand it. I was aboard the Riviera in Bremen on the 20th and 21st of March of this year when the crew was signed on articles.

In Response to Questions Asked by the Court the Witness Testified as Follows:

When the men signed on in the salon in Bremen I gave a hand to Captain Johnson by signing on the men because most of the crew could not speak English and when Captain Johnson would telkthem something I would explain it to the crew. I can't

(Testimony of Hans Kuehl.)

remember exactly what, just questions about money. The men were most interested to ask how much wages they were to get. I can't remember that anybody asked about the length of time they were to serve on the ship. I didn't tell them they were going to be signed on for 30 days or 60 days or a year or two years. Nobody asked. I only explained when there was a question between the crew and the master. The men did not read the articles before they signed them. The articles were laid on the table. I read them. This is my writing here. I gave a hand to the crew. You see, some of those that is able to write is in the articles and I hand to the crew to sign, to sign the articles. The articles were on the table and they were switched over to sign. They were laid out flat and each man came up and signed. We take about 10 or 20 members of the crew in the salon, not all the crew. They was in the same time. All members of the crew was in the salon at the same time.

(In showing how the crew signed the witness said:)

"I was sitting here, and the crew was over there in the salon, and the Captain Johnson and Captain Cowden was sitting just in this, and beside me was sitting Captain Cowden, I think it was, and then I explained to the crew, 'You sign on for British wages, British conditions.' Then I ask for those addresses and so, then I say, 'Now, you sign on,'

(Testimony of Hans Kuehl.)

and give it to the crew which was over the table there to sign."

I had a discussion with members of the crew before they signed. I explained it before the crew signed on, the day before when they came on board and asked for a job. I tell them this is British regulation, that overtime was paid on the expiration of the trip and I did it because I had some other crews, some other men on board before, and say, was complaining about overtime. I was on board the Riviera before March 20, 1952, with the second engineer, third engineer, fourth engineer, steward and bosun. I told them the Riviera was under the Liberian flag. I was talking about that. On page 2 of the articles on the left-hand side there is written in for the term of two years. That is usual. It was the only article to which part of the crew know, just the same. I didn't tell them that they were signing articles for two years. I did not say exact two years or something like for myself. I don't know if any of the men read page 1 before they signed it. If they would ask me or something I would say something but nobody was interested on what he sign. He only was signing that and then was finished. I don't remember hearing Captain Johnson tell these men how long they were signing on. I remember those German labor contracts. They were signed after the articles. Some signed the same day and some signed on another day. They were all signed before the ship sailed because the German Labor Office would not allow German seamen to go out

(Testimony of Hans Kuehl.)

without signing those German labor contracts. At the time the German labor contracts were signed no one asked any questions about the German labor contracts. The German labor contracts have a statement to the effect service shall be at least 30 days. Nobody asked about that. There was a discussion about where the ship was going and how long it would be gone. The discussion was where the ship is going, that we are going out east to India and then somebody was talking how long it can be; so nobody knows because it was a tramp ship and we only know that we have to go out east and we get the addresses from the agents to give our wives so they can send a letter. The men didn't know that they were first going to call on the port of New Orleans. We knew that we were going to New Orleans to the States to take a cargo of grain from there to India with our cargo. The men knew it, certainly. The ship had been sailing between Germany and the United States for some time. I explained to the men that the trip which they were signing on was going to be a longer trip. That was in Bremen before the men signed on. I told the bosun department, deck, engine crew. None of the men objected to the fact that they were going to be gone for a considerable length of time. I didn't tell them at the time they signed on or at the time they applied for the job. The men came on board and wanted a job. Nobody refused to take the job because it was going to be gone too long. Only one man refused to take the job at first because it

(Testimony of Hans Kuehl.)

seemed to him to be not much money enough. The men didn't ask about the amount of food they were to receive on board the ship. With respect to the provisions on page 8 which says that under the law they are entitled to certain rations, it was not a question about food or taste, because usually in each ship it is the same. The first time I examined the smothering lines was when I joined the ship in September of 1951. The next time I don't know the exact time but it was once when the 2nd engineer came to me and said, "I think the boiler is leaking," and so I examined the boiler and I found out the boiler was not leaking and so I looked all over where any water could go, which one be loose, and then at this time I test also these valves if they was tight enough and was good. I could turn the valves by hand except the master valve. Last night when I went back aboard the ship I and Captain Cowden tested the valves. I showed him the valve and he tried the valves by himself. Captain Cowden turned those valves. He was standing beside me and I turned on some valves and Captain Cowden turned on some other valves. He did it by hand. The master valve is closed with a spanner. I opened the master valve. Captain Cowden asked me about these valves. I am living on the ship, Captain Cowden talked to me about opening those valves, and I accompanied Captain Cowden when he opened the valves. I opened some of the valves myself. Captain Cowden opened the main valve with his hand. He opened some of the other valves which were beside the

master valve. He did not open the master valve. I opened the master valve with my spanner. It was not hard to open. All the others worked.

I have been on the ship continuously since the strike. The water from the city lines was connected by men from the shipyard. The pressure is greater and as a result there are leaks on the line now because the city line pressure is over 100 lbs. Before the strike we were working on the cooling system on the ship. We were running the refrigerator in the cooling engine for only the small box which you saw yesterday. I shut off the other box rooms. On September 11 and 12 I was in a position to keep the fish room and some of the other coolers cold. About the 11th or 12th the meat box started to heat up. It was going to 28 or 30 degrees and then I removed some of the remaining meat into another box. The first time I heard the meat was not good was when we arrived here in Portland when the fireman, Kratky, came and told me that and I told him that was not in my jurisdiction. I told him to write on a piece of paper because he could not speak English and I gave it to the master. Kratky didn't talk to me directly about the food. Berg is in my department. He told me that the quality of the beef was poor. That was when we went up to the master. He told me that he would go up and talk to the master about this meat. I ate the meat on the trip from Bombay to Calcutta and then to Portland. I cannot say if I was satisfied or not satisfied because I am experienced enough to know that

(Testimony of Hans Kuehl.)

we cannot get in India first class meat but it was in my personal opinion that this meat could be much better cut and then it would be tasting better. I didn't get sick from eating the food. I do not know of anyone else who got sick from the food.

On Cross-Examination by Mr. Carney the Witness Testified:

I inspected the steam smothering gear in September, 1951, when I first came on the ship and one of my officers told me there was a leak some place. I cannot say how long ago. It was quite a few months. When the ship was in New Orleans the surveyor came on board and when he wanted to examine the steam smothering system he called me or the second engineer and he said, "Now we want to make a test of it." I don't know if there was an examination in New Orleans. I can't remember that. I do not know of my own knowledge whether the surveyor actually tested the steam smothering valves in New Orleans. I saw this Makiki agreement in the pocket of the 4th engineer and I asked for it. He was telling me about the Makiki case and we was talking about this wage scale and so I asked if I could see one and he showed it to me and then I asked if I could have it.

ANDREW HARDY

a witness called on behalf of respondent, SS Riviera, was duly sworn and testified as follows:

Direct Examination

By Mr. Mosser:

I am the licensed second officer of the SS Riviera. I am also a lieutenant with the British Naval Reserve. I have gone to sea for 36 years. Exhibit 16, a copy of the Makiki agreement, was handed to me around the 8th or 9th of September. It was the day of the strike. One of the members of the crew gave it to me. I think it was Symonds. I saw a few copies in the hands of the crew. I could not tell you who brought them aboard the vessel. There was a blue card, exhibit 9, attached to it when they gave it to me. With respect to the quality of the food which was served on the SS Riviera it is hard to make a comparison with other ships because this was the first experience I had had with ships of this class. I have always been at sea on semi-liners or passenger ships whose foods are equal in quality to any palatial hotel, but as to the food as I found it on the Riviera it was certaintly not of a very superior quality, but it was very inadequately cooked. There was ample amount of food. I am too wide awake to ever get sick from eating any of the food. No one came from the shore side of the ship to talk with me about wages or working conditions on board the ship on the 7th, 8th or 9th. I do not have supervision of the lifeboats but it comes under the category of my various duties occasionally to see that the lifeboat that I am assigned to is in order.

(Testimony of Andrew Hardy.)

I assume that if we have a seaworthiness certificate they would be in order but it is not my duty to see that they are in order. The third officer checks the lifeboats. He checked my particular lifeboat twice during the voyage. I have got to be satisfied with the boat if the surveyor is satisfied.

On Cross-Examination by Mr. Tanner the Witness Testified:

I am very careful about what I eat. If something is not right I do not eat it. If the meat looks a little off I keep from getting sick by not eating it. On many occasions on this trip that was the way I kept from getting ill. I did not tell other boys to keep wide awake while they were eating. They can look after themselves. I am never concerned about what others do.

I do not eat with the crew. When I say there was plenty of food I was talking about food that was served in the officers' quarters. I understand that the men got exactly the same menu as we did but I never went in there to see what they had. There was quite a bit of complaining about the food; a sailor is not a sailor unless he starts grumbling. There was quite a bit of grumbling on this ship—a lot more than on other ships that I have been on. They started to complain when the ship was one day out. I don't think it was because they didn't have enough food. I think the crew were a bit homesick. There were plenty of complaints about the vessel.

(Testimony of Andrew Hardy.)

On Examination by the Court the Witness Testified:

The complaints may have been about the weather. It may have been about the condition of the ship. They never complained to me about the food. I overheard them talking about it to themselves but they were not talking to me officially. It was from the beginning of the trip. I have always been more or less on passenger ships.

On Redirect Examination by Mr. Mosser the Witness Testified:

I said the food was inadequately cooked. As to the meat I am not qualifying it any more. I don't mean that there were things alive in the meat and I don't eat cereals. I cannot substantiate the complaint about weevil among the cereals because I never eat them.

JAMES McAUSLIN

a witness called on behalf of respondent, SS Riviera, was duly sworn and testified as follows:

Direct Examination

By Mr. Krause:

I am the steward on the SS Riviera. I signed on at Bremen about the 21st of March. It was my first voyage. I was sent from London to join the ship. I signed the articles in the salon with the rest of the crew. I knew I was signing articles for two years.

(Testimony of James McAuslin.)

That is the general run of things on British ships. I did not sign the German Labor contracts. They had nothing to do with me. I have been to sea for 25 years and have worked as a steward for 14 years. I have worked on tramp steamers exactly of this type. I ordered the stores for the voyage in Bremen. We have a scale that is issued under the NMB agreement, so much per week. You go above the scale what you consider a reasonable amount. We have got to keep control of things and we use the scale as a guide. There was so many pounds of meat per man per month. I have a copy of the scale. It is the same that was set out in the articles. I knew the sort of voyage we were bound on. I knew the ship was going out east and I also knew that we did not know when we would be back. I provisioned the vessel when I left Germany for 3½ months. That was to take us to whatever the next place was to get orders to take our meat from. Our first call was New Orleans where we loaded grain and from there through the Suez Canal to Djibouti and then Bombay. We did not obtain additional meat at New Orleans. The meat we bought in Germany lasted us until we got to Bombay. It was in perfect order but it was gone when we got to Bombay. At Bombay I requisitioned additional meat. I had to get another four months' stores in Bombay consisting of meat and everything. We took on around 4,000 lbs. of meat, including ham, bacon, mutton and pork and offal as well. I had been in India before but I had never been on a vessel that had Indian beef. This

(Testimony of James McAuslin.)

was the first Indian beef I had ever ran into. It might have been of very inferior quality. There is no argument about it. It was definitely of poor quality. You cannot get any other kind in India. There is no fat in the meat of any sort. It is just lean kine. I would not say the meat was not fresh and wholesome. The meat was not bad. It was of poor quality but quite eatable but, as I have said before, some of it was bad and we had to put it over the side. I did not order the ship's cook to use spoiled meat. I told him that if at any time there was any doubt about it to dump it, to throw it overboard. There was plenty of meat that was not spoiled.

"Q. Well, this beef, this Indian beef, there was some testimony here that the cook would have to trim off about 40 pounds in order to get 40 pounds of good meat. Is there anything to that?

"A. That is quite reasonable, yes. It was very bad, very bad.

"Q. So there were pieces of beef that had to be thrown overboard?

"A. Oh, yes, definitely. I agree with that, yes."

With respect to supervising the cook's work, I can't be down there. I also have my own work to do and if the cook had any questions he called me down and I said, "Well, ditch it, use it, or get more," whatever I thought was the proper procedure. I ate the meat that was cooked myself. There was no other meat on the ship. Later on we purchased some Australian beef in Singapore. That

(Testimony of James McAuslin.)

beef was all right. We intended to use the Indian beef first before we used the Australian beef. We did use some mutton that we got in Singapore but we did not use the beef. We kept our Australian beef with the idea of using the Indian beef first. We had gotten some mutton in India but that had been used up just after we left Singapore and then we used the Australian beef after that. With respect to the complaints that we received from the people we served aboard the ship, the cook used to tell me that the men were complaining about the food. He definitely told me that. As far as I could gather they were complaining about everything. You receive so many complaints that after awhile you pay no attention providing you do not consider they are reasonable and I did not consider these complaints reasonable. On other ships I had received complaints but I would say there was a greater percentage of complaints on this ship.

Upon Interrogatories by the Court the Witness Testified:

The complaints started on the trip from Bremen to the United States, but I never received any what I would call personal complaints. It was all in a round-about way. The cook told me on the way over to the United States from Bremen about complaints. They did not complain about the meat on the first trip from Bremen to New Orleans or out of New Orleans. The complaints were only from Bombay. There were no complaints at all on the trip from

(Testimony of James McAuslin.)

Germany to New Orleans. We had a German cook; then he left the ship at New Orleans and we picked up this Peterson in New Orleans.

On Redirect Examination by Mr. Krause the Witness testified:

After we left New Orleans and headed for India before we got the Indian beef there were no complaints about the food to my knowledge. The complaints started while we were in India. The complaints were limited mostly to the meat that we took on in India. It was mostly about the beef. With respect to the beef I ate I did not get any discomfort or illness and I had no knowledge about other men being ill from eating the meat. None was reported to me. Comparing the German cook with Peterson, I would imagine that the crew were more used to German standards of cooking. Most of the crew were Germans. There were only three or four English people on the ship but the German cook left New Orleans. He cooked German style so naturally the people would find it more congenial to them. They approved of the German cook because he was cooking German style. There is a great deal of difference in the age and experience between Peterson and the German cook, so naturally the German cook would be a bit better than Peterson because he was older and more experienced. I did not talk to the members of the crew on September 8 or 9 about their refusal to work. I never asked them why. Goldsmith handed me a leaflet contain-

(Testimony of James McAuslin.)

ing the Makiki agreement and I also got a blue card. Goldsmith asked me to read it. That is all he asked me to do. Goldsmith gave it to me around the 15th or 16th. It was after the strike.

On Cross-Examination by Mr. Carney the Witness Testified:

I have been a steward for a number of years. Prior to that time for about 8 years I was ship's cook. It is the duty of the steward to plan the menus and the stores ahead of time. When I left Bremen I knew I was going to India with a stop at New Orleans on the way. I had been in India before.

"Q. You know that it is impossible to get good quality of meat in India. You knew that, didn't you?

"A. One minute, please. I am only doing as I am told. I got told to take three and a half months' stores. That is all I do. That might have been altered somewhere else. I got three and a half months' stores so I took it after that I am finished."

I received my instructions from the company in London. They told me to get 3½ months' stores from Bremen and I did that. I was told not to take on stores at New Orleans except port stores. We had enough stores to carry us to India. Then I expected to reprovision there. I was carrying out the instructions the company gave me. When I came into Portland I made out an order for port stores. The order for sea stores came afterwards. It was

(Testimony of James McAuslin.)

after the 8th or 9th of September, I would say it was about the 11th or 12th that I asked for sea stores. I couldn't say truthfully if it was after the men had stopped working on the ship but it would be within a day or two, between the 8th and the 11th or the 12th, something like that. My instructions in Portland were to take on stores to Singapore. That is all that we were provisioning for. I ordered some cases of canned grapefruit juice which appears in Exhibit 15. They were just small tins of grapefruit juice; they were ordered for the officers' mess. The crew got fresh grapefruit. The canned grapefruit was for the salon. We ordered three cases of grapefruit, 2 boxes of apples and 2 boxes of oranges, I think. They were not ordered for the officers' mess. The crew got that as well. I ordered 130 lbs. of pork loin sausage and 50 lbs. of pork liver. I also ordered 300 lbs. of beef in Portland. At that time we still had the Australian beef that we had shipped from Singapore. We were only going to be here three days so you can add to the 300 lbs. which we got here the 500 lbs. that had not been used. We only expected to be in Portland 2 or 3 days so far as I can gather. We threw overboard about 50 lbs. of meat we bought in India. I would not say it had a definite odor when it thawed out. It was definitely not bad. Now and again we would come across an odd piece, that is all. There was a bit of odor from a bad piece. I had not personally in my experience before cooked Indian meat. You

(Testimony of James McAuslin.)

cannot roast that beef. You can only stew it but I ate the meat that was boiled and stewed, and I did not find any fault with it. Peterson was as reasonable as other cooks that I have found but cooks get blamed on any ship. I have had a lot worse cooks than Peterson on other ships. It is difficult to satisfy a group of men on a ship after they have been together for a long time eating the same food. It would not make any difference how good the cook was, but there was complaining on this ship especially when the men were served the meat from India. That was the primary complaint. I had told the chief cook not to serve any other meat until we had used up the meat we had bought in India. I would say there were about 200 lbs. of Indian meat still on the vessel when it arrived in Portland. I observed weevil in the cereal and other things that we had. We had a package of Quaker Oats. Sometimes you get weevils in them, the hot weather in Bombay starts to heating. They grow in Quaker Oats. I saw them myself. They do not grow in corn flakes, just Quaker Oats. The Quaker Oats were in a carton, in paper boxes. I found weevil in them. We picked up rice for the storeroom in Singapore. I never saw any weevil in those stores. With respect to the stores I didn't look in it yesterday. We have not used any for six weeks since we came in. It is not unusual to find weevils in rice or in oats that have been through hot weather. They grow in the stuff itself.

"Q. What do you do when you find weevils? Do

(Testimony of James McAuslin.)

you throw it out, or do you sift it, wash it out? What do you do?

"A. With flour you just merely sift the flour, and it comes out—we have what we call a hair sieve to sift flour through. The weevils are left over and you throw them away. They keep rolled oats in a kettle and put hot water on them. The weevils will float to the top, and when I say weevils that is the type of weevils you get from bad meat. They are just little black insects, just float to the top.

"Q. How about rice?

"A. They will grow in rice as well.

"Q. Do you sift them out or put water over them?

"A. Same thing as flour and rice, you put water, they will come on top.

"Q. Is it common practice on good boats to throw out rice or oats that are infested with weevils?

"A. Well, if they are absolutely infested, yes, you can't get them out, but sometimes you find just a few in them.

"Q. What was the situation with reference to the oats? Was there just a few or was there a lot?

"A. There was just a few. I would not say there was a lot.

"Q. Did you have any cockroaches on the Riviera? A. Oh, yes.

"Q. You had cockroaches?

"A. Yes, we had cockroaches."

The master requested me to set up a hot plate

(Testimony of James McAuslin.)

and provisions in his cabin in case he was up or called during the night for any reason. That was three months ago. On one occasion I brought eggs but he never used them.

In Response to Interrogatories by the Court the Witness Testified:

I dished the stores out weekly for the men consisting of lunch meats and cheese and bread and preserves so they could make their own food at night. I gave these stores to one of the men and they have a locker of their own in their own pantry and they keep them in there, so that the men on late watch could make themselves a sandwich, consisting of cheese or maybe preserves and bread, butter and possibly toast. There was no meal for them and there was no sandwiches prepared for the night watch for the crew, but the officers had them. With respect to the provisions we intended to take on board in Portland, we had 200 lbs. of India beef and we also had 500 lbs. of Australian beef. Then we were purchasing 300 lbs. of beef in Portland which was in addition to pork, ham, liver and various other things. We anticipated those stores would take us to Singapore and we were only provisioning the boat until we got to that port. There is an adequate supply of good food in Singapore which is sent up from Australia. It cannot be compared with India. The men did not talk about the type of supplies that we were going to take on board

(Testimony of James McAuslin.)

for the coming trip to the Far East. Nobody asked if we were going to buy good meat and vegetables or canned food. Nobody talked with me about it.

On Cross-Examination by Mr. Tanner the Witness Testified:

We had an order to use up all the India beef before we used any other kind of meat. That order is still outstanding and has never been taken back as yet. They were using the meat when we came into Portland but they have not used it since we came into port. They quit eating it sometime ago. The amount that they were throwing away when they trimmed it was less than half. The amount they were throwing away just before they got to Portland was about the same as they were throwing away after they left India. It is too drastic to say that about half of it was thrown away but I will say it was a quarter to a half.

S. PENGAS

a witness produced on behalf of respondent, SS Riviera, after being sworn, testified as follows:

Direct Examination

By Mr. Mosser:

I represent the New York agents of the SS Riviera. I am familiar with the charter which was to be performed by the SS Riviera starting here in Portland. Bombay was the port of discharge for the Riviera. That port was the one selected for the charter rate.

(Testimony of S. Pengas.)

The quantity of cargo to be taken was 38,540 lbs., and at the charter rate would amount to $105,912.00. I am familiar with the expense of operating the Riviera. This expense consisted of fitting the ship for grain cargo, the loading expense, and then the bunkers, and the discharging expenses at the Port of Bombay. These expenses and the unloading and loading for this particular charter for this voyage would amount to $38,000.00. In addition to that we would have the daily expense of the ship, the upkeep of the ship, the insurance, the depreciation, the payroll, subsistence, management operation expenses, deck, engine and steward's stores. In figuring the daily expenses of the ship we figure all the stores, engine, deck and steward's department. They are not using the steward's stores aboard the vessel now. We have subsistence expenses for the members of the crew at this time of about $35.00 per day per man. The normal subsistence figure for the vessel we figure at $48.00 per day for the whole crew. I have seen the various bills which have come in for the Riviera while it was here in Portland. We have to pay the Port of Portland authority $50.00 per day for docking. Then we have $15.00 per day agency fee and we have an expense of $17.20 per day for detaining the men in Seattle, Washington, and $13.50 for the guards on the ship, and then we have about $25.00 telephone expense. The total is about $160.00 per day. I am familiar with the general charter market for vessels of this type. The charter rate for vessels that were about

(Testimony of S. Pengas.)

to embark in early September is a little above the present charter market. The present market is about 85 shillings, or 75, it depends, but this is somewhat higher, $11.48 is the tonnage figure. We get 82 shillings for $11.00. That is the rate of this charter. The general charter market is $8.50 to $8.75. I do not think it got worse. It was frozen all the time. You would not know how bad it was until it was thawed out. Some of it was bad. We knew that, but it was after it was thawed out that we could tell how bad it was.

JAMES McAUSLIN

was recalled and in response to interrogatories by the Court testified as follows:

After we left Bombay we were beginning to get complaints from members of the crew about the food and particularly about the meat. Some of the complaints exceeded those to which we were normally accustomed. I received the information through the cook. He is always complaining and I don't blame him for that but I just didn't pay any attention to it. The captain learned about the complaints in a round-about way. I might have said to him that some of the men said that the meat in the Irish stew, for instance, was not any good. Then I would forget about it for a week again, but that happened afterward. I had received orders from the captain not to use the Australian beef which I knew was good. I never suggested to the captain that we use the Australian beef be-

(Testimony of James McAuslin.)

cause I considered the Indian meat was quite edible, but it was definitely a poor grade of meat. The Australian meat was definitely better. I did not feel it was desirable that some of the crew should be served roasts and meat that can only be cut from a higher grade and I did not do it.

On Cross-Examination by Mr. Tanner the Witness Testified:

I got the order not to serve the Australian beef from the captain. I got this order just after we left Singapore. The captain just said to use the India meat first before we started on the Singapore meat. Sometimes I argue with the master about the decisions that he makes but in this case I didn't. I took his orders with the exception of the Australian mutton. We used the Australian mutton. It was only the India beef we did not use. We had run out of India mutton but to make a bit of a change instead of using nothing but beef all the time we started using Australian mutton. We had run out of mutton that we bought in India before we started using the Australian mutton. I followed the captain's orders with respect to using up the India beef first. The trial was concluded and the cause submitted to the court for decision.

United States District Court,
District of Oregon

No. Civ. 6735

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

M. D. MacRAE, JOHN DOE, RICHARD ROE, Etc., (SS RIVIERA),

Defendants.

TESTIMONY IN NARRATIVE FORM

In the case of Compania Naviera Hidalgo, S.A., plaintiff, vs. M. D. MacRae, et al., defendants, Civil No. 6735, in the United States District Court for the District of Oregon, in a proceeding on an order to show cause on December 1, 1952, before the Hon. Gus J. Solomon, the following testimony was adduced:

M. D. MacRAE

defendant, was produced on behalf of the plaintiff, and after being duly sworn, testified as follows:

Direct Examination

By Mr. Krause:

I live at at 2515 N.E. 9th Avenue, in Portland, Oregon. I am the representative of the Masters, Mates & Pilots, national organization of Masters, Mates & Pilots, Local 90, for the Portland Branch. It is a local of the National Organization. The Na-

(Testimony of M. D. MacRae.)

tional Organization's headquarters are in San Francisco. The Masters, Mates & Pilots have Local 90, Local 117 at Portland, Local 89, Local 16 for the pilots. There are inland locals. Local 17 is the river boatmen. For ocean-going ships there are no other locals except Local 90. The officers include the president, first vice-president, second vice-president, 5 trustees, secretary-treasurer, Portland representative, Seattle representative, San Pedro representative, three shareholder trustees, two delegates at convention. I am the Portland representative. I am an officer of the Masters, Mates & Pilots Local 90, a representative of Portland. I am the only representative here. I did not receive orders from anyone to put the picket line on the Riviera. That is my responsibility. That is not one of the duties that I am directed to perform by any executive officer of the union. No executive officer instructs me about putting a picket line on vessel. I have received no such instructions. I receive instructions from executive officers and I have discretion in performing my duties as a representative of the union here in the Port of Portland as I see fit. I am a representative of members of Local 90 here in Portland who are employed on ships and who are unemployed. I was elected agent of the Masters, Mates & Pilots, Local 90, at an election by referendum vote up and down the Coast by all members of the union. My office runs for two years. I have been the agent in Portland since April or May

(Testimony of M. D. MacRae.)

of 1945. My term continues until January 1, 1954, and I receive a salary check which comes from San Francisco. The membership fixes my salary. I perform my duties according to the Bylaws of the National Organization. The only instructions I get from executive officers are those which are according to the Bylaws. Local 90 is a voluntary association. It has a Constitution and Bylaws. Plaintiff's Exhibit 1 is a book entitled "Bylaws of West Coast Local No. 90, National Association of Masters, Mates & Pilots of America, A. F. of L."

(Offered and received in evidence.)

It is the Constitution and Bylaws of Local 90. We have a National Constitution. No one instructed me to put the picket line on the Riviera. I did discuss it with other officials of Local 90 before putting the picket line on, and it was left up to me, to my jurisdiction. I discussed it with my superiors in San Francisco, the president, Captain May and Captain Cross, the Secretary-Treasurer. They told me to use my own discretion in putting the picket line on. They didn't say yes or no. They said "You are in charge of the branch in Portland, Oregon. It is your jurisdiction. You use your head." There are more than 1,000 members of Local 90 in the whole organization but not right here in Portland. Some are here and some are in other ports and some are at sea. I have no jurisdiction over the other members in other ports. The picket line at the Riviera was put there by the Portland Branch

(Testimony of M. D. MacRae.)

of the West Coast Local 90 and was ordered there by me, under the jurisdiction of the Portland Branch. I certainly made an investigation regarding the Riviera. I watched the case ever since it came into Portland. I found out about some of the facts in the newspapers but not all of it. I talked with Mr. Benz about the Riviera at the time the court put an injunction, a restraining injunction against the SUP. I called Benz and I asked him, "How about this injunction that the court has put upon you?" He says, "Yes, they put a restraining order against me, and I guess it will be a temporary injunction, what it was." And I said, "Well, what are you going to do about it?" He says, "Nothing, we have to take our pickets off." And I said, "Okay. Well, then, I can put pickets on the ship. There is no restraining injunction against me." That is what happened. That is the only conversation I had with Benz so far as Benz or the SUP is concerned. He is finished with it.

It is in the Masters, Mates and Pilots hands right now. I talked to the agent at General Steamship Co., a representative of the vessel, after I put the picket line on. I didn't talk to any representative of the vessel that I wanted to put some of our members on the ship. There was no representative that I knew of in Portland that would talk to me. I knew the General Steamship Co. was the agent for the ship. I didn't talk to them about putting any master or mates on there because I know that they would not listen to me. I did not have to talk to

(Testimony of M. D. MacRae.)

them. They know our wage scale. The information was there. The General Steamship Company know the wage scale and I didn't talk to them about the wage scale before I put the picket line on. I talked with them after I put the picket line on. He got in touch with me. The man that I talked to was representing the General Steamship Company. He didn't tell me his name and I didn't ask him, but someone from the General Steamship Company called me. We talked in general principally about what the picket line was doing there at the Riviera. The agent asked me why the picket line had been put on and I told him for the reason that I wished to have our men employed on those ships due to the fact that these ships were taking jobs away from our men and our men were sitting on the beach here. Also that those ships are now cutting the economic conditions of our men down to the level of what they think they are going to pay their vessels. I do not think it is right, in my estimation, that the rest of the United States Government are working at big wages, and if we have to cut down the wages of our seamen down to the Riviera and I got the wages for that down on the Riviera right in my pocket right here for the mates and the master of that ship. I have not the master's because it is supposed to be a private agreement, but I got the wages they are paying for the other three mates in my pocket and I would like to show you to contrast the difference between the two, how they undercut us and carry freight while our men are

(Testimony of M. D. MacRae.)

sitting down in the hall here. I got 104 of them on that list here that was given to you, right now sitting down there waiting for a job, and this ship comes in and takes a job away from our members where last year we carried all the wheat to India. This year all the ships came back in again. They are being tied up, put into the boneyard in Astoria, and our men are sitting on the beach while those fellows come in and cut out throats. There has been throat-cutting going on since the first of last year. Before the first of last year cargo was taken across the Pacific from the United States on American ships. I don't say all of it was handled on American ships, fifty-fifty on the east coast, but cargo for India was all carried on American ships. These fellows come in here and put our men on the beach and somebody has got to fight for them, and that is my job to fight for those men; that is why I was elected on this job. I have been here 7 years now and I am still fighting for them. There have been other foreign ships of this type we have put a picket line on. The Pho Pho was one, in San Francisco. I was down there at the time but I was not interested in that. At that time it was a beef with the SUP but not with the Masters, Mates & Pilots. In the last strike we had here in Portland for the longshoremen I had a picket line on the soap dock. There was a picket line on a foreign ship and it stopped the longshoremen from going to work on that ship. There were two or three of them here that I had a picket line on. That was

(Testimony of M. D. MacRae.)

during the longshoremen's strike. The longshoremen settled their agreement before we did. We were still left hanging out on a limb when the longshoremen settled it and they wanted to go back to work on foreign ships. We would not let them and I put a picket line right here in Portland on the foreign ships and it stopped them from going aboard and working the ships. It was a Swedish ship operated right out of Sweden. It was not one that was with the Portland Packer's Association. I have no members of Local 90 on the Riviera. I am trying to get jobs there if I can. As long as they are going to carry wheat cargo from the Columbia River to India which was taken away from our ships, I am going to picket the ships in order to force the owner to give our men jobs and put these other men out. As far as the ship is concerned they can go any place, carry cargo, whatever they like and we are not going to bother them, but as soon as they take jobs away from our men carrying wheat to India by American ships where we are supposed to have them, we are going to interfere with them, but if they want to run their foreign ships in their own foreign commerce, we let them mind their own business and stay away from here so far as I am concerned. I have not made inquiry as to what union represents the master and mates on the ship. I understand from the newspaper that they belong to the Maritime Trades Union or something of London, England, which is probably a company union. I didn't say it was a company union. I have

(Testimony of M. D. MacRae.)

had no occasion to order picketing of any other foreign ship carrying grain across the Pacific besides the Riviera. If there were other ships in the same category I would do it. I have had no occasion to order any others. I know it is a fact that Japanese ships have been in here to take grain across the Pacific, but that has nothing to do with the ships that are running to India. I don't know if the wage scale on Japanese ships are higher than on the Liberian ships or Panamanian ships.

I made arrangements to have Mr. Tanner as our counsel here represent me. I made those arrangements with Mr. Tanner. I did not get any instructions from San Francisco as to who to employ. I have known that Mr. Tanner represented the SUP since I came to the Portland office years ago. I knew that he represented the SUP in the picketing case. We have no regular retained attorney but when we do use an attorney we use Mr. Tanner.

On Interrogatories Propounded by the Court the Witness Testified:

I had no pickets in front of the ship at the time the SUP was picketing. I discussed with my local members the advisability of putting a picket line on the Riviera prior to the time the court issued the injunction removing the SUP pickets. There was no resolution adopted by the members of the Portland Branch recommending that I put on a picket line. I made the determination on the basis of the

(Testimony of M. D. MacRae.)

facts as I found them with the sanction of the members in the Portland Branch. We had a meeting but I would have to look up the record to find out if the meeting was before the court ordered the removal of the SUP pickets. They were not called in for picket duty before last Friday. When I found out the ship was working and was going to go to sea I notified the members in the Portland area who are not working to come in for the purpose of discussing the advisability of putting a picket line on. I did not telephone to all of them. I couldn't get all of them. I put the picket line on after I notified the members. I talked to the officers in San Francisco after I put the picket line on. I talked to them at 4 o'clock Friday morning. The thing that made me decide to put the picket line on was the fact that I had read in the paper that the court had ordered the SUP to remove the pickets. I called Mr. Benz and told him I had read in the paper where the court had got an injunction against him and I asked him what he was going to do about it, and he said he couldn't do anything about it. As far as he was concerned he had to take his pickets off, and I said, "I can put pickets on that ship." I did not put pickets on the ship until the Albina Shipyard started to work her. I did not get all of my information concerning the dispute from the papers. I did to a certain extent. I told the reporter that we were putting the picket line on for our own benefit and not for any benefit for the SUP. I didn't make a statement to him that I

(Testimony of M. D. MacRae.)

was putting the picket line on for the same reason that the SUP put it on. It was not necessary to make a contact with the owners of the vessel for the purpose of putting members of the Masters, Mates & Pilots on the Riviera. As long as the ship was going to lay there they didn't need any personnel aboard her. When it was decided by the court here, then it came down to where we had to take charge of it. I had no agreement with Mr. Benz at any time that before he would pull his picket line that we would have an opportunity to put a picket line on. I didn't make any deal with Benz. Naturally I took it for granted that even without making any agreement with Benz I would still have an opportunity to put on a picket line, even after they had made peace with the owners. We are affiliated with the AFL just the same as the SUP is concerned, and we always back one another.

If the SUP had obtained better wages, hours and working conditions for the men on the Riviera I would then have to decide whether I could tie up the vessel unless the owners made a deal with us with reference to the master and mates. There are lots of things you have to think of afterwards in regard to those cases. When the SUP had its picket line on the Riviera I had in mind at that time I would contact the owners and require the owners to make a deal with the Masters, Mates & Pilots concerning the master and mates on the Riviera before I would permit the ship to sail. I did not communicate that decision to the owners

(Testimony of M. D. MacRae.)

of the vessel because the owners have never been here to my knowledge and I did not communicate that information to Mr. Benz or any member of the SUP. I did communicate that information to the officers of Local 90 in San Francisco. It was sometime prior to the time I ordered the pickets on the Riviera but I don't know for sure how long. The ship had been in here for two months. This has been going on a long time and I know all about this ship ever since she came in. I know everything that has been going on. I am a representative of the Masters, Mates & Pilots and I know every move that is being made on that ship. I have been talking about that ship many times at San Francisco. It don't just happen to come up today. It has been up for two months and a half or more and I have talked to San Francisco about that ship many times. With reference to all the men that is on the ship, with reference to the whole deal, I have been talking to San Francisco about that ship but never about any orders from San Francisco to put a picket line on. It was left up to me. The purpose of our picketing is to require the owners to put our personnel on the ship and bring the wages up to a living wage for an American officer on that ship. The Riviera is a Liberty ship. A Liberty ship under our agreement is included under Class C. The wages of a master is $989.50. First officers $496.50. Second officer gets $435.50 and the third officer gets $400. The rate for overtime is $2.95 an hour. On the Riviera I could not find out the

(Testimony of M. D. MacRae.)

master's wages but the mate gets $144.90. The second mate gets $117.66, the third mate is $96.60. The overtime rate is 40 cents an hour providing they stay aboard the ship for two years. If they do not stay aboard for two years they do not get anything.

On Direct Examination Continued by Mr. Krause the Witness Testified:

If you are working for a company there is a guarantee as to how many months in the year captains and mates are going to work, if they are on a continuous payroll. There are 104 of our men on the shore right now. They are not all masters. They are not exactly working; they are doing temporary relief work on a temporary basis. It may amount to enough to keep the wolf from the door. That is about all. The pickets are carrying some sort of banner and it says "SS Riviera Unfair to Masters, Mates & Pilots Affiliated with the ITWF." ITWF is International Transport Workers Federation. I don't have to discuss with any Transport Workers Federation my intentions to put a picket line on the ship and I didn't. All the pickets that have been ordered on the Riviera are members of the Masters, Mates & Pilots. Local 90 is not paying for picket duty. The pickets are doing it gratis. They are doing it without pay, except I give them a cup of coffee. I went down yesterday afternoon, took my wife with me, took a pot of coffee down to the boys. It was pretty cold.

JOSEPH HENDERSON JOHNSON

a witness called on behalf of plaintiff, after being duly sworn, testified as follows:

Direct Examination

By Mr. Krause:

I am Captain Joseph Henderson Johnson and I live at Paisley, Scotland. I am of British nationality and belong to the Masters and Mercantile Marine Service Association, a British labor union. It is an association for masters only. I am the master of the Riviera and we have three mates. I have not signed the articles yet. They are still in court. The owners have directed me to take command of the ship. The former master was Captain Cowden. He is the chief officer now and there are two other mates. I believe all these men are members of the British unions that have jurisdiction over mates on ocean-going vessels. The wage scales for the mates signed on the Riviera are negotiated between the British unions and the ship operators and are in excess of the British union wage scales.

(A booklet entitled "The National Maritime Board Year Book, 1952, Summary of Agreements" was marked Defendant's Exhibit 2 for identification.)

(By agreement it was put in evidence.)

Captain Cowden was captain of the Riviera at the tim the ship's articles were signed by the men, we now have on the ship for this present voyage.

(Testimony of Joseph Henderson Johnson.)

I gave him a hand to sign on the crew. The articles were signed by Captain Cowden and by these two mates that are on the vessel now. The chief officer who was on the ship was transferred to one of the other ships of the line.

(It was stipulated between the parties that there was no dispute between the mates and the master and the ship or the ship's owner.)

The pickets have stopped the shore employment. The picket line was put on at about a quarter to 9 on last Friday morning. Shore employees were engaged in the repair of the vessel at that time. They stopped working immediately and went ashore. There have been no repairs carried on since that time. The ship has been entirely idle. The vessel is not able to proceed to sea as she is now. There are repairs that still have to be done. The vessel was under charter when she arrived in Portland to carry cargo from here. It was an open charter with the government of India and it is still in force and has not been cancelled.

We do not need additional crew aboard the vessel while the repairs are being made. It will require three or four days to complete the vessel's repairs. We now have aboard six men for the crew, including the chief engineer, wireless operator and chief steward. Six besides myself. Assuming that the members of the crew returned to the vessel while it is still in port, it would not take longer than three days to get the additional men that I need.

(Testimony of Joseph Henderson Johnson.)

I am generally familiar with charter rates and the carrying capacity of the vessel. I have discussed with the owners the matters involving the cost of operation.

(It was stipulated that by reason of the inability of the ship to move and its inability to go to sea the ship owners were sustaining substantial damages.)

There are other damages which the ship is sustaining that cannot be computed in money while we are lying in port, because it is involved in this type of dispute she will always be classed as a hot ship and there will be difficulty in chartering her. The charterers will know the name she has and they may have to take a lower rate. When they are looking for charters they prefer other ships than ships that are known as a hot ship and the same thing is true with respect to getting a crew.

On Cross-Examination by Mr. Carney the witness testified:

I first came to Portland on the 14th of October. I was informed on the 22nd of November that I was going to take over as master of the Riviera. My instructions were in a telegram dated November 22.

(Marked Defendant's Exhibit 3 for identification.)

(Testimony of Joseph Henderson Johnson.)

Mr. Cowden was willing to resign as master. He was only in temporary command while I was on vacation. He was willing to relinquish command to me. I have taken over the duties as master. Captain Cowden has taken over the duties as chief mate and the chief mate was transferred about a month or five weeks ago. We had a vacancy on the Riviera for the last month or five weeks. I had no other correspondence with respect to my appointment except the telegram. That was the only written communication. My monthly salary as master is $480. I assisted in signing on the crew at Bremen. My rate of pay when I signed on was greater than that called for by the British National Maritime Board. The master did not have discretion in the matter of wages that we were to pay the crew. The company told us the wages to pay. They sent the officers over from London. Whatever mate is joining the ship he is sent from the Southern Steamship Company, the company's agent in London. It is the company that hires the mates and masters for the Riviera. The wages for the mates and masters were set by that company and they were the ones that told me what the pay was. It was somewhat in excess of what the National Maritime Board book called for. The National Maritime Board is a committee between the shipowners and the union, and they settle all disputes and agreements regarding wages. It is a committee of shipowners and the British unions and has representatives from the companies and representatives from

(Testimony of Joseph Henderson Johnson.)

the British unions. The headquarters of all the unions are in London. I think the representatives that make up the Maritime Board come from all over the United Kingdom. I couldn't say whether there was a written agreement between the owners of the Riviera and any one of the unions with respect to what wages would or would not be paid aboard the Riviera. I don't know anything about it. I have been master of the Riviera for about two and a half years and during all of that time I have never seen a written agreement between the owners of the Riviera and any British union. The charter which the Riviera had with the Indian government was for grain cargo. The charterers are in Washington, D. C., and the charterer tells us what ports we are to call at on the West Coast of America. I do know from Delhi what ports to call at in India but as to what ports I would call in the United States I get that information from the Indian Supply Mission in Washington, D. C. I was on the payroll of Southern Star Steamship Company prior to the time that I assumed the duties of master of the Riviera. I joined the company in July, 1950, and have been on the payroll ever since. I was on the payroll continuously even before and during the time that Captain Cowden was master of the Riviera. The Riviera is an American-built ship of the Liberty type and before it came into Portland it carried a cargo of coal from India to Japan, and just prior to that time it carried a cargo of grain from New Orleans, Louisiana, to

(Testimony of Joseph Henderson Johnson.)

Bombay, India, for the Indian Government, just like the present cargo that I am about to carry. I do not have any charter as to the commerce or trade that I will engage in after I get to India.

On Cross-Examination by Mr. Tanner the Witness Testified:

With respect to the articles that are here in court and are not signed, when this matter is all over and we are able to take off, they will be signed, just like we did before we left Germany, and that is the way I am going to handle it. We do not handle our employment by signing on before a Commissioner and we have no agent who is present that handles that. We do it just by a notation in the ship's log book. We do not consult the agent we have here with reference to those matters. When we finally make arrangements with the crew we have them sign before we start on the voyage, and the reason the articles are not signed now is because they are here in court. But I put a notation in the ship's log. I have not signed any articles yet.

I have had occasion to hire men in other American ports and I have them sign articles and if there is a Liberian Consul in port I have him present, and if not I do the whole lot myself. I have had no experience with respect to finding a Liberian Consul in any port. I understand there is a Liberian agent in New York. I have not had

(Testimony of Joseph Henderson Johnson.)

occasion to use him. He speaks English. The experience I have had is to bring the men in and I take care of the signing-on and I did that before the ship left port. And that has been done with respect to any of the men here. We have got to have about 32 men for a total crew. We expect to hire them here and we intend to accomplish it by having a new crew fly from Europe. It could be done in less than three days if it is required. I don't know what my plans are. It has not been settled yet. But that is what I had in mind, to get somebody over from Europe to come and sign on the ship. Perhaps we could get some Britishers. The British Consul stated there are a few Britishers around. They did not hire any American subjects in New Orleans. They hired a Danish cook there, I understand. We never tried to hire Americans. I intended to get them over from Europe and then put them on the job here, or getting some from the Immigration here. The Immigration have Britishers here on the beach and if the Immigration has anybody that they are ready to deport, we would hire them, but I would get them cleared from the Immigration first. I would not be at liberty to hire anybody until he was cleared through the Immigration. I understand that the two members of the crew of the Riviera are under orders of deportation but I do not know that they are not available for employment until they are cleared for immigration.

United States District Court,
District of Oregon

No. Civ. 6745

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

JEFF MORRISON, JOHN DOE, RICHARD ROE, and JOHN ROE, Individually and as the Representatives of All of the Members of the Atlantic and Gulf Coast District, Seafarers' International Union, A. F. of L.,

Defendants.

TESTIMONY IN NARRATIVE FORM

The hearing on the order to show cause was had on December 12, 1952, wherein witnesses were produced on behalf of the plaintiff in support of its application for an injunction, and the following testimony was adduced.

JEFF MORRISON

a witness called on behalf of plaintiff, after being duly sworn, testified as follows:

Direct Examination

By Mr. Krause:

My name is Jeff Morrison and I live at 5055 Seventh Northeast in Seattle and have lived there for approximately 12 to 14 months. I am the North-

(Testimony of Jeff Morrison.)

west Representative of the Seafarers' International Union, Atlantic and Gulf District.

It is an autonomous organization within itself. There are no other districts. There is a separate organization known as the Seafarers' International Union that has jurisdiction over the Great Lakes. My instructions were channeled through Mr. Paul Hall in Brooklyn, New York. Mr. Hall is the executive officer of the Searfarers' International Union, Atlantic and Gulf District. His official title is secretary-treasurer and it is that officer that exercises the executive powers within the organization. The organization does not have a president. The Searfarers' International Union has a president. I am not the International representative; I am a District representative.

Mr. Harry Lundeberg of San Francisco is president of the Searfarers' International Union and as far as I know, he is also secretary-treasurer of the Sailors' Union of the Pacific and he is the executive officer of the Sailors' Union of the Pacific. There is a difference between the organization with which I am connected and the organization in which Mr. Lundeberg is president and I will give you this example. There is a Plumbers' Union and there is a Carpenters' Union. That is the difference between the two. Each of the unions are autonomous organizations affiliated under the Seafarers' International Union the same as any other A. F. of L. Unions though we are in the same trade.

I do not belong to the Searfarers' International

(Testimony of Jeff Morrison.)

Union. I belong to the Atlantic and Gulf District. My union card which I hold makes me a member of the district. I have no privilege, job opportunity, or anything of any other district that might be under the International.

There are about eight or ten autonomous districts in the Searfarers' International Union. In addition to the Atlantic and Gulf District there is the Lakes District, there is the Brotherhood of Marine Engineers, Inland Boatmen's Union, Marine Allied Workers, Canadian District, and the Sailors' Union of the Pacific. The Sailors' Union of the Pacific is affiliated with the Searfarers' International Union. The Sailors' Union of the Pacific is an independent union affiliated with the Seafarers' International. All the districts are autonomous organizations. I would not say that so far as the sailors are concerned there are just two districts, the Atlantic and Gulf and the Lakes District. In our own district, the Atlantic and Gulf District covers all licensed personnel. The Canadian District covers all licensed personnel in the Canadian area, and any other organization where they are able to organize within their own district, and the Inland Boatmen's Union, are also sailors. They have ocean-going vessels. The Marine Allied Workers also have sailors. They cover the ocean-going towboats and inland waterways. The Brotherhood of Marine Engineers is a district that deals with the work of seamen, that seamen do on ocean-going ships. They are officers in the engine room, engine

(Testimony of Jeff Morrison.)

department. The SUP is a district of the Seafarers' International.

I first learned of the difficulties the Riviera was having by my executive officer, Paul Hall, who called me and asked me to look into the possibilities. It was Mr. Lloyd Gardner who is under Mr. Hall who called. He happened to be out on the Coast at the present time carrying out some work for the organization. He called me from San Francisco and I got the call the afternoon of December 9. It was somewhere around the 9th, maybe the 8th. His conversation to me was that there was a vessel by the name of the Riviera apparently attempting to hire seamen, and he wanted me to try to intervene and make an attempt to run the wage scale up to our standards in an attempt to better protect the standard of living that the organization that I am in has established.

After talking to Brother Gardner I came into the area and contacted various people that I thought could give me some information on it. I contacted Mr. Benz of the Sailors'. He suggested that I contact Mr. Tanner and Carney as far as any information concerning the ship, and he told me that he would be glad to make an appointment for me if I wanted to go ahead and talk with them.

I had previously talked with Mr. Gardner. Mr. Gardner told me to come into this area and find out about it, and I came into the area and talked to Mr. Benz first. Mr. Benz told me that these gentlemen, Mr. Tanner and Mr. Carney, would be better

(Testimony of Jeff Morrison.)

equipped to tell me all of the details, and I told him that I was interested in contacting the owners or operators, general agents, the masters, or anyone that could talk to me in regards to negotiating a wage scale in comparison to that which we enjoy in this country. Mr. Benz told me that he would suggest before I went any further to talk to Mr. Tanner or Mr. Carney; that they had been involved and were involved at this time, or something to that effect. At any rate, they would be the people that could give me a complete story from the beginning to how I could begin this operation, and of course I did go to Mr. Tanner and Mr. Carney. They gave me a general outline, I believe, of certain procedures that had been gone in the courts here and so forth. Mr. Benz is one of the representatives of the Sailors' Union of the Pacific. He is the Port Agent for the Sailors' Union.

After talking with Mr. Tanner and Mr. Carney, I decided that my best opportunity would be to go directly to the master of the vessel. I went aboard the ship and was told about these things by the Chief Engineer, and I believe the second mate aboard the ship told me the master was not aboard the vessel, and I told them I was looking around possibly for any employment that they might need for my members. I was talking with the second officer and the Chief Engineer. They advised me that I should go to the agents who were General Steam. I believe this was on the morning of the 9th or 10th. It was before I put a picket line on the dock. It was

(Testimony of Jeff Morrison.)

late in the afternoon that I put the picket line on and this occurred early in the morning.

In the late afternoon I made a trip up to the General Steamship Company's office and a young lady advised me to see Captain Anderson who had an office on the pier. I believe it is 1020 Front Street. So I went down and saw Mr. Anderson, and I explained to him that I was a representative of the Seafarers' International Union covering the area of the Pacific Coast down to the Oregon border and I was looking for possible employment for our members under conditions that were comparable to that which we enjoy under the various contracts. So he advised me that I should return to the ship, and on returning to the ship I was told by various people working aboard the ship, that the master had been there and had been there all day and that he had just taken off from the vessel prior to my arrival back there. It was the shipyard workers that told me that the master had been there all day. I assumed that they were shipyard workers. They possibly could have been a crew. I didn't ask them, but I did ask them if the same men had been there in the morning, and I asked them if they knew the master and if he had been there, and they said the master and somebody else had just went ashore. I asked them how long they had been aboard and they said they had been aboard there all day. I had asked for the master when I was there that morning, but I did not get to talk to him.

(Testimony of Jeff Morrison.)

It was Captain Anderson that I had been told by the General Steamship Company's office uptown was the Port Captain for the General Steamship Company. I put the picket line on because I felt there was little else I could do. The man, apparently, to me, was making himself conspicuous by his absence. I put the picket line on late in the afternoon of the 10th. I would not be certain as to the dates, but I think it was the late afternoon. It was after I had gone around trying to find somebody connected with the ship who had some authority, who would talk with me about the possibility of an agreement being reached with respect to wages, so that an American seaman could get on the ship and make a decent living. I had no intent to take the jobs away from anybody. My business was to negotiate a wage agreement; I knew that possibly there was employment there, and if any of our members was interested in it if the wages were such, then they would accept it. We have a surplus of seamen on the beaches. I could not ascertain definitely whether there were any jobs available.

It is part of my duties to negotiate contracts with steamship companies on ships. The Seafarers' International operate on the Pacific Coast of the United States, and I am working at the present time on a contract with an ocean tow company that operates out of the port of Seattle. They are for crews for ocean-going vessels, dealing in trade between Alaska and the United States. They are freight carrying vessels. When you get into the freight carrying vessel then you class them as a ves-

(Testimony of Jeff Morrison.)

sel, in seamen's language, and that is the only one I am familiar with.

I was negotiating this contract for this towboat company with the Atlantic and Gulf District. It is not a towboat. It is known as the Ocean Van Lines operating SS Seafarer which is a four-hatch Liberty ship. They also operate the MV Gadson, which is a Liberty ship, and they operate the Alaska Star and the Alaska Express, which are N-3 type vessels. Those are American ships and their head office is in Seattle, Washington. With respect to the jurisdiction of the Sailors' Union over the offshore vessels on the west coast, the jurisdiction lies with the organization and the jurisdiction is with the organization that reaches an agreement with the companies that is involved regardless of the area, such as we did in the Ocean Van Lines case. That is a Pacific Coast steamship company. The Sailors' Union of the Pacific and the Atlantic and the Gulf District have equal rights to organize employers anywhere in the country. We recognize them as an American Federation of Labor organization. We recognize them the same as we recognize carpenters, plumbers, pipefitters, and so forth. There is no exclusive jurisdiction in any organized field whether it is Pacific Coast, Gulf Coast, or even on the Great Lakes. If we have a membership that desires to join our organization and desires us to represent them, they have that privilege of requesting us to.

On the west coast we have contracts with the Ocean Van Lines. We have been under contract and

(Testimony of Jeff Morrison.)

have a N.L.R.B. certification for approximately a year and a half. That is the only company that has a local office. We have other companies operating out of the West Coast. We have the Waterman Steamship Company and they have vessels exclusively off the west coast. I am not in the steamship business and just how they do these things I do not know. I know that the Waterman Steamship Company maintains an office known as Waterman Steamship Companies, 310 Sansome Street, in San Francisco. They operate six to eight C-2 vessels off of the West Coast to Japan. Now whether they have a Pacific District area or subsidy to do that, I couldn't answer.

We have intercoastal ships, the Calmar Steamship Company, the Isthmian Steamship Company, which are operating ships off the coast in intercoastal trade. All of the contracts ultimately go through the executive officer's office. It is not in all cases that our contracts are made with companies that have their principal offices on the Atlantic Coast or the Gulf. The Ocean Van Lines is one that does not operate on the East Coast and they do not operate in the Gulf. They operate between Seattle and Alaska. They originally came out of the Port of Portland. When I came to Seattle we had both of those vessels in this port.

I came to Seattle 12 to 14 months ago. I am the Northwest Business Representative covering the area from the Oregon border north. I am the Business Agent and I operate to the California border

(Testimony of Jeff Morrison.)

and I conduct all the business of the organization within this area. I have an office in Seattle. The branch covers the area, you might call it, it is a representative's office. We have members in Portland and Seattle. We conduct meetings in Seattle every two weeks. We do not conduct meetings in Portland. We cannot form a quorum here. I would not say that my job is to furnish replacements for ships that have SIU contracts. I do furnish replacements on those ships when they are requested, and I am occasionally requested to furnish a man to a ship that has an SIU contract.

The NMU also has a representative in Seattle and I believe they have a representative in Portland. I am not sure. Our organization is a competitor of the National Maritime Union on the East Coast. The National Maritime Union is affiliated with the CIO and our union is A. F. of L. and we are in competition on both coasts so far as jobs are concerned and both union members find employment on this coast. I do not have with me a copy of the Bylaws of the Seafarers' International Union, Atlantic and Gulf District. I have my membership book. Mr. Lloyd Gardner is assistant secretary-treasurer of the Atlantic and Gulf District. He and Mr. Harold Fisher, head West Coast representative, called me from San Francisco, both of them talked with me. We were talking jointly on extensions from their office at 450 Harrison Street, Room 100, and that is the same building in which the Sailors'

(Testimony of Jeff Morrison.)

Union of the Pacific maintains its office and there are other organizations there, too.

I picketed myself, and I was one of the pickets at the ship. There was another picket by the name of J. R. Johnson and he is a permit member of the Atlantic and Gulf District. He got his permit approximately two and a half years ago. Mr. Johnson is not a member of the SUP. As far as I know, he has never sailed with them. Mr. Johnson and myself have been the only pickets down there. I draw a salary from the organization and the organization is paying Mr. Johnson's expenses. I picked a man out of the hall in Seattle, and asked him if he would go along with me. I brought him down here from Seattle and I am paying his expenses, if you call that paying him for picketing. The funds that I am using to pay his expenses are funds of the Atlantic and Gulf District. Mr. Tanner gave me the information that is in my affidavit to the effect that upon arriving at Portland, Oregon, on December 10, 1952, I was informed that the master of the Riviera and the officers, and agents and representatives in Portland, Oregon, had made it known that they did not intend to employ American seamen on the vessel, and it was Mr. Tanner that told me that they did not intend to employ members of the Seafarers' International Union, Atlantic and Gulf District. He did not specify the Atlantic and Gulf District. He told me that they were not hiring any American seamen, and that means our members.

It was Mr. Gardner, my executive office, who

(Testimony of Jeff Morrison.)

gave me the impression that an attempt was being made to hire a crew, and there were rumors that the crew was being paid 45, or 50, or 60 bucks a month and he wanted me to look into it. Now who told him that or where that information comes from, I don't know. I don't know yet whether the vessel has a crew or not.

With respect to what they are paying on the vessel, I have a list that Mr. Tanner gave me and he said that was a list of the wages that had been paid. That is all I had with respect to the wages. I don't know where Mr. Tanner got his information. I suppose it was through the court proceedings. That was my impression. I asked Mr. Gardner about it and he told me that some of our men had been contacted or approached to accept those wages. He advised me of that at that time. I always have a man with me when I travel. We have local members here in Portland. Our men in this area were not approached, so far as I know. We have men living all over the country, even up in Canada, Puerto Rico, and the Hawaiian Islands. I have no definite proof that they were approached. We have no way of knowing. They were not approached in this area. When I refer to area, I mean Coos Bay, Portland, Seattle, Longview, St. Johns, St. Helens and Astoria, and I refer to the area that I represent.

On Examination by the Court the witness testified:

My purpose was to increase wages to a point that any American seaman that could obtain employment aboard that ship would accept it. For some time now

(Testimony of Jeff Morrison.)

we have had difficulty with seamen, whether they are alien or American seamen, sailing out of this country. It has made unemployment for our members because ships such as the Riviera have such low standards that the American operators cannot meet the competition. We felt that in this particular instance that possibly we might be successful in getting a wage scale that would be accepted. I would say that 15 to 25 per cent of our members are foreign nationals. We have lots of men that have been nationalized. We organize in Great Britain, in China or any place. We have had representatives in Great Britain for short periods of time, but we do not have a permanent stationed representative stationed there. We have Canadians in our organization and we have foreign aliens belonging to our unions. There is an autonomous organization in Canada. Excluding the Canadian autonomous organization, the Atlantic and Gulf Coast District of the Seafarers' International have aliens who are members of the union, and they operate coast to coast, and if they have a visa they are allowed to operate intercoastal. A visa provides that they can take work intercoastal. I have shipped quite a few aliens intercoastal. I have had some accepted, some rejected, and it has always been a mystery to me just what the difference is because some of them have visas and are still aboard. Our district does have among its members persons who are not American citizens. We do not have a branch office in Canada.

(Testimony of Jeff Morrison.)

The Canadian seamen have an autonomous organization but they are affiliated.

I did not concern myself about the problems that had arisen here in Portland until I had been advised by Mr. Gardner and Mr. Fisher. I would not say that that was because the SUP was handling it. I was engaged in other activities and I had not even heard about it. I had read in the Oregonian and the Seattle Times short articles about it, but not about the whole conclusion of the case and the various rumors and so forth that fly around. For the past several months I had been doing lots of traveling on union business and engaged in quite a bit of contract work for companies that we already have contracts with, rewriting, renegotiating new wages, new conditions, and working out vacations, welfare and so forth, that come under the union's contracts. I was bettering those contracts. It was my desire to negotiate a wage scale as the employment was out of the question. I was interested in bringing up those wages where they are the same wages that people in this country have to pay. They can hire anyone they want to hire, personally, as far as I was concerned. It was up to them to hire anybody they wanted to hire as long as they paid wages that were paid by the American companies so they could meet on a competitive basis.

(Testimony of Jeff Morrison.)

On Further Direct Examination by Mr. Krause the Witness testified:

If employment was available for our members, I wanted them to have it: I wanted our members to have employment if employment was available. I do not see anything inconsistent with my position and that taken in my affidavit. In my affidavit I said I wanted to have our members placed on the vessel where employment was available. It was our interest. Our interest was in increasing the wage scale. Then if we have men available that can be hired, we are interested in having our members allowed to work. The employment is something that will take care of itself through the proper channels. Our sole interest is to get those wages up.

JOHN JOHNSON

a witness produced by the plaintiff, after being duly sworn, testified as follows:

Direct Examination

By Mr. Krause:

My name is John Johnson and I am a citizen of the United States. I live at 2327 3rd Avenue, Seattle. I have gone to sea in the steward's department. I was last at sea about 40 days ago. I am thirty-nine years old.

I am a permit member of the SIU. I do not hold full membership in any union. I have had the permit for two and a half years from the Atlantic and

(Testimony of John Johnson.)

Gulf District. When I got the permit I was sailing from Mobile on the Gulf. I have sailed on more than one voyage. My last voyage was about 40 days ago. I have never been a member of the SUP. I have gone to sea about 15 years off and on. I have always sailed under a union. Prior to my permit in the Atlantic and Gulf, I was a member of the Marine Cooks and Stewards. I have no official connection with the Atlantic and Gulf District.

I was in the hall when Mr. Morrison came and asked me if I would go with him and he said there was a possibility we might picket the ship but he didn't say definitely. He said there was a possibility of our picketing the ship when we left the hall in Seattle if they did not raise the wage scale and make some sort of an agreement with the SIU, there was a possibility but it was not definite. Mr. Morrison told me he would take care of my expenses, that was all.

I went on the picket line late in the afternoon on Wednesday, about five o'clock, the 10th of December. Today is the 12th. I picketed on the 10th from the late afternoon until about 6:15 and the following day I was there I believe about 7:30 until they called me to come in here to court. There was someone there to take my place when I came into court. I don't know who the man was. I never saw him before, I don't know him. I am not acquainted with Mr. Benz of the Sailors' Union. I don't know him.

JOSEPH H. JOHNSON

a witness produced by the plaintiff, after being duly sworn, testified as follows:

Direct Examination

By Mr. Krause:

I am Captain Johnson and master of the Riviera and am a citizen of Great Britain. None of the crew members now aboard the vessel are nationals of the United States.

The Riviera is engaged in tramping, carrying cargoes all over the world, wherever we can get them. She is not in condition to go to sea. She is still undergoing repairs, that I have testified to heretofore. When the picket line was removed on the 8th of December, we continued with the repair work on the ship and the repair crews came aboard and they didn't continue working after the SIU pickets appeared.

As soon as the SIU pickets came, no shipyard crews went aboard any more. The photograph that appeared in the Oregonian on Friday, December 12, is a photograph of the picket banner that the pickets have been carrying at the gangplank of the Riviera.

(The photograph was marked as Plaintiff's Exhibit 1 and offered and received in evidence.)

If the vessel could proceed with her plans we will load wheat here and proceed for India, after the repairs are completed. We have the cargo lined up ready for her. The cargo is ready now and it will require about two days to complete the repairs. It

(Testimony of Joseph H. Johnson.)

will require about three days to load the cargo and the ship with stores. As long as the pickets are there we are not able to get any work done on the vessel.

On Cross-Examination by Mr. Carney the witness testified:

We have six men at the present time on our crew; there are six aboard. I have signed the Articles as master. The Articles are not aboard the vessel. They are out of court.

They are in Vancouver, B. C. Mr. Cowden, the chief officer, has them. He was the former master of the vessel. He is signing on a crew at the present time in Vancouver, B. C. I have been in communication with him. I communicated with him again today. I said in another case that I thought I could get a crew in three days. I did not say that we were going to fly the crew in either from New York or Germany. I said we could fly them in in three days. We plan to fly them in less now. We are signing new crew members at the present time. We are signing them on in the deck and engine and catering department. The only persons that are aboard the vessel now are officers. We do not have a full complement of officers on board. We have a full complement of officers signed on. We have a full complement signed on in the deck department. Those persons are in Vancouver. I do not have any of their names. I was informed today that they were signed on. I got my information from Captain Cowden. He didn't supply me with their names.

(Testimony of Joseph H. Johnson.)

He told me there were 23. That is not in the deck department, that is in all departments. He told me that he had a full crew. I talked with him yesterday. I have been in communication with him every day. It was yesterday that he told me that he had a full crew. No, it was the day before yesterday that he told me that he had a full crew. It was over the telephone. They were signed on on the Articles at the same rate of pay that the former crew were signed on and I am familiar with those rates. The pay for ordinary seaman starts at 15 pounds a month, and that would be about $70 or $75. That is not $2.80 a pound, not in Britain, it is $4.80. In Britain at $4.80 a pound the ordinary seaman would get about $75 per month. An able-bodied seaman would get about 28 pounds a month. In the States you would calculate a pound at $2.80 and that is what we calculate when the vessel is in a United States port. When we pay a man in dollars we multiply it by $2.80, and we do that when they draw money in American ports. So if we were to pay an ordinary seaman in American money in an American port, we would pay him at the rate of $2.80 per pound, and that would be $40 a month. And an able-bodied seaman if he was paid in an American port would get $68 per month. And the wages for a bosun is 31 pounds a month. And the wages for a carpenter is 33 pounds and five shillings per month. The donkey greaser or oiler gets 30 pounds and 10 shillings. The fireman gets 28 pounds and 10 shillings. The chief cook gets 34

(Testimony of Joseph H. Johnson.)

pounds a month. The assistant steward gets 27 pounds. The overtime rate of pay is three shillings per hour, and figuring the pound at $2.80, the overtime rate would be 40 cents per hour. The overtime rate for donkeymen and bosun and carpenter is three and thrupence. The wages for the jobs listed in the affidavit are set forth in dollars and if you compute the pound at $2.80 per pound those wages would be correct in dollars in an American port. I think the able-bodied seaman is more than $68 per month. I think it would be $88 per month. He has got his Sundays at sea, around about that. An able-bodied seaman starts at 24 pounds and after four years he gets 28 pounds. It is a pound every year. It starts at 24 pounds. I do not count the wages in dollars, I count the wages in pounds. That would be like if you computed the pound at $2.80. I did not employ any of the seamen in Portland from any of the maritime unions, and I did not intend to employ any Americans on the Riviera. It is not my policy to employ Americans. It is my policy to ship British. I am going to the United Kingdom and I would have to send them back to America. I did not intend to employ Americans if I am at all fortunate to get British help.

It was my intention of paying the wages that I have discussed, according to the Articles of Agreement on board. I would not hire American seamen at the wage scale that is followed by American seamen.

I am familiar with some of the wages that are

(Testimony of Joseph H. Johnson.)

paid the American seamen for work on Liberty ship vessels. I don't know how much they are being paid. If an able-bodied seaman is getting $302 a month, I was trying to get Britishers. I had to go by the Articles. I had six men on the Articles and I intended to follow out the wage scale that was set out in the Articles and that was the same wage scale that was paid to the crew who quit the vessel in Portland. Some of them are still aboard and some have quit the vessel.

Mr. Cowden went to Vancouver on Sunday morning, December 7th. Wednesday was December 10. I was aboard the vessel during the day but not during all the day. I was not aboard all day from eight in the morning until five at night. I was on board until 10:30 in the morning, and I returned to the ship later in the day in the afternoon. I was down on the dock about half past three (3:30).

The chief engineer and the officers did not tell me that Mr. Morrison had come aboard asking for me. They told me that two men had been on board and that they were looking for me. They didn't tell me who they were, or their purpose of being on board.

The Riviera is engaged in the tramping trade. On or about April of this year we took a cargo of grain from New Orleans to India. That cargo of grain was carried pursuant to the terms of a charter with the Indian Government, and it was made with the Indian Commission in Washington, D. C.,

(Testimony of Joseph H. Johnson.)

with the Indian Government at Delhi. Then the vessel made a trip from India to Japan with a load of coal and it returned to the Port of Portland empty and we intended to get a load of grain and take it to India, for the Indian government. I picked up my orders with respect to the grain from the charterers, which I understand to be a New York firm. I have not seen the charter. I understand it is in court. I testified in the case against the Masters, Mates & Pilots that I received my instructions from the Indian Commission in Washington, D. C., as to where to pick up the cargo in Portland, and I was told the people were arranging the wheat cargo in New York. They send our instructions by radio. I can't remember who they send my instructions to in Washington. It is called the Indian Commission. It has something to do with the Indian Government. The telegram was sent to the Indian Supply Mission. The charter provides that the Indian Supply Mission in Washington shall give the instructions. Our agent in New York usually sent the instructions by radio.

I did not know that Mr. Morrison had been asking for me on the 10th. I heard him testify about it. If I had seen him I might have been willing to hire his men. I might have. I would not say that I would talk with him about the wages that they wanted and all that but I would have talked with him. I do not think it would be right to pay able-bodied seamen $302 a month. I would not have authority from my company to pay wages at that

(Testimony of Joseph H. Johnson.)

rate. I have to keep in mind the officers I have on board the vessel, and I would have to see the owners before I would pay seamen wages higher than their pay.

On Redirect Examination by Mr. Krause the witness testified:

When the people are paid in Great Britain if they are paid in pounds they do not figure it at $2.80 per pound. In Great Britain the prices are much lower than in this country. Food prices are lower. Everything is much lower. With respect to the prices charged the crew for things that are in the slop chest, whether those prices are based on British prices or American prices depends on where we pick up cigarettes. If we pick them up here, the calculation is made at $2.80 a pound. We charge American prices while the ship is in American ports. The ship does not carry clothing and things of that sort for members of the crew. The slop chest is limited to tobaccos, candies and things of that sort.

[Endorsed]: Filed February 17, 1955.

[Title of District Court and Cause.]

Nos. 6699, 6735 and 6745

ORDER ADMITTING EXHIBITS

This matter coming on for hearing upon the application of the parties for an Order for the admission of pretrial exhibits, and it appearing to the court that at the time of the trial all of the exhibits were offered and that objections to some of the exhibits were made by the parties, and that at the trial the matter of the admission of the exhibits objected to was taken under advisement and not ruled upon expressly by the court, and the court being fully advised,

It Is Hereby Ordered that all of the exhibits offered at the trial be and they are hereby admitted into evidence, and

It Is Further Ordered that this Order be made nunc pro tunc as of March 22, 1954.

Dated in open court nunc pro tunc March 22, 1954.

/s/ GUS J. SOLOMON,
Judge.

[Endorsed]: Filed February 17, 1955.

[Title of District Court and Cause.]

Civ. No. 6699

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for trial before the undersigned Judge of the above-entitled court, plaintiff being represented by Wood, Matthiessen, Wood & Tatum and Gunther F. Krause; defendants being represented by K. C. Tanner and Richard R. Carney. Counsel for the parties prepared a pretrial order and entered into a stipulation for the trial of this cause with Civil Nos. 6735 and 6745 and for the reception herein of transcripts of testimony and exhibits previously taken in these and certain previous cases heard by the Court. The Court entered said pretrial order and approved said stipulation, heard the testimony and considered the evidence submitted by the parties and considered the briefs submitted by counsel. Now being fully advised, the Court makes the following

Findings of Fact

I.

At all times herein mentioned plaintiff was a corporation duly organized and existing under and by virtue of the laws of the Republic of Panama.

II.

At all times herein mentioned, defendants, William Benz and Robert Williams, were members of the Sailors Union of the Pacific, a voluntary, un-

incorporated association having as officers a Secretary-Treasurer, Port Agents and Patrolmen. At all times herein mentioned the Secretary-Treasurer of said union, its principal executive officer, was a resident of the State of California. At all times herein mentioned the defendants, Benz and Williams, were the Port Agent and Patrolman, respectively, of said Union in the Port of Portland, Oregon, and were citizens and inhabitants of the State of Oregon. Plaintiff is a citizen and inhabitant of a state or country different from that of each of said defendants.

III.

At all times herein mentioned, the Sailors' Union of the Pacific had a membership upwards of 5,000 men, many of whom were employed on ocean-going vessels so that it would have been impracticable and impossible to join all of said members as defendants in this suit. At all times herein mentioned, the Sailors' Union of the Pacific operated under rules and regulations by virtue of which its members acted as an organized body, and its members had sufficiently identical interests in the subject matter of this suit to constitute a class subject to suit by service on representatives. Defendants Benz and Williams, by virtue of their positions as members and officers of such union and their interest as defendants herein, are appropriate and capable persons to represent the interests herein of all of the members of the Sailors' Union of the Pacific

and were sued herein as such representatives, as well as individually.

IV.

In March, 1952, plaintiff became the owner of the SS Riviera, and at all times herein mentioned said vessel was registered at the Port of Monrovia, and sailing under the flag of the Republic of Liberia.

V.

Between March, 1952, and August, 1952, the crew members of the steamship Riviera, principally German and British, and all citizens of countries other than the United States, signed a British form of articles whereby said crew members agreed to work on said ship on a voyage from Bremen, Germany, for a period of two years and further agreed that British Maritime Board conditions were to apply to wages and hours of employment, and agreed that shore leave and cash advances were to be at the discretion of the master of said ship. By the terms of said Articles of Agreement, said crew members and plaintiff herein agreed upon the wages to be paid to the crew members and the provisions to be furnished to crew members, and the scale of wages and provisions as agreed upon were set forth in said agreement. The wage rates specified therein for each crew member were equal to or higher than those customarily then paid for similar employment in the British Merchant Marine. Said crew members further agreed by the terms of said articles to be obedient to the lawful commands of said master in everything relating to said ship and the stores

and cargo thereof, whether on board, in boats, or on shore.

VI.

After leaving Bremen, said SS Riviera proceeded to New Orleans, Louisiana, where a cargo of grain was loaded. Said cargo was carried to and discharged at a port or ports in India, where a cargo of coal was loaded. Said cargo of coal was carried to and unloaded to a port or ports in Japan. The SS Riviera then sailed in ballast to the Port of Portland, Oregon, where it arrived on September 3, 1952, and docked at Swan Island Dry Dock.

VII.

The purposes for which the vessel came to the Port of Portland, Oregon, were to complete an insurance survey, carry out repairs indicated as needed by said survey and voyage repairs, and to load a cargo of wheat for the carriage of which to India the said vessel had been chartered by its owners.

VIII.

Plaintiff complied with all of its obligations under the terms of the ship's articles and the contract governing the relations between the plaintiff and members of the crew of said vessel.

IX.

On or about the 9th day of September, 1952, a number of members of the crew of the Riviera refused to obey the lawful orders of the master of said vessel and went on strike for the sole purpose

of cutting down the term of their service from two years, the length of service agreed upon in their Articles, and to obtain a higher wage rate and other conditions more favorable to them than those agreed upon in said Articles.

X.

From the date of said strike up to and including September 26, 1952, the said striking crewmen of said vessel remained aboard the vessel, continued to occupy their quarters, refused to continue to work aboard said vessel and refused to leave the vessel. On or about September 18, 1952, plaintiff filed in this court a possessory libel, bearing Civil No. 6629. On September 25, 1952, said striking crewmen were ordered by order of this court in said possessory libel to leave said vessel and said crewmen, on September 26, 1952, left said vessel.

XI.

From September 9, 1952, until September 26, 1952, said striking members of the crew picketed the vessel. Said striking crew members or others acting for them picketed said vessel from September 26 through October 13, 1952, when they withdrew their picket line. On or about September 15, 1952, said striking members of the crew of the SS Riviera designated the Sailors' Union of the Pacific as their collective bargaining representative. On October 14, 1952, members of the Sailors' Union of the Pacific, acting pursuant to said designations and pursuant to a resolution duly adopted by said union, commenced picketing said vessel and con-

tinued to picket it until restrained and enjoined from further picketing by this court on November 26, 1952. Said picketing would have continued thereafter had it not been so enjoined. All of said picketing at, around or near the SS Riviera was at all times conducted in a peaceful manner and without any violence.

XII.

Said picketing by members of the Sailors' Union of the Pacific was intended to prevent the repairing and loading of the SS Riviera; and the sole purpose of said picketing by the members of the Sailors' Union of the Pacific was to compel the plaintiff to re-employ the said discharged, striking members of the crew of the said SS Riviera for a shorter period than that stated in the articles, and at wage rates and other conditions more favorable to them than those stated in said articles.

XIII.

Employees of stevedoring and ship repair firms and other shore employees ordered to work on the said SS Riviera refused to so work while said pickets representing the Sailors' Union of the Pacific were present. Immediately after the removal of said picket line, employees of contractors with whom plaintiff had contracted for the repair and preparation of the vessel to carry her cargo of grain to India resumed work on said vessel as requested. Plaintiff was unable to use its vessel for the period from October 14 through November 26, 1952, and the sole and proximate cause of such loss

of use was the said picketing by defendants. Plaintiff was not deprived of the use of the SS Riviera by any technical custody of the U. S. Marshal during said period.

XIV.

There is no labor dispute between plaintiff and defendants or the Sailors' Union of the Pacific or between plaintiff and any members or former members of the crew of the SS Riviera, or between the Sailors' Union of the Pacific and members of the crew of the SS Riviera.

XV.

The Sailors' Union of the Pacific and its members have an economic interest in the working conditions and wages of the seamen employed aboard the vessels engaged in the grain charter trade between ports of the United States and the Orient.

XVI.

The average wage, exclusive of found, paid by the plaintiff aboard the SS Riviera for the services of a seaman was approximately $88.00 per month, which sum amounted to only about one-third the amount of the cash wages paid to seamen represented by the Sailors' Union of the Pacific while employed aboard United States flag vessels engaged in the trade of carrying cargoes of grain under charter from ports of the United States to ports in the Orient.

VXII.

All of the agreed facts set forth in the pretrial order are true.

XVIII.

As a proximate result of defendants' said picketing, plaintiff has suffered immeasurable and irreparable damage to its reputation for honesty and fair dealing and its ability to obtain charters for the SS Riviera has been impaired. As a further proximate result of defendants' said picketing, plaintiff has suffered definite and measurable damage, through loss of earnings and the expense of maintaining the SS Riviera and the loyal members of its crew during the period October 14, 1952, through November 26, 1952, in the total amount of $38,700.00. The port expenses of the vessel were at the rate of $250.00 per day and the loss of net earnings $650.00 per day for the 43-day period.

Whereupon the Court makes the following

Conclusions of Law

I.

The Court has jurisdiction of the subject matter. Plaintiff has no administrative remedy under the National Labor Relations Act as amended by the Labor Management Relations Act of 1947, and the Court is not deprived of jurisdiction by the existence of any such remedy.

II.

The Court has jurisdiction of the parties. This is a true class suit and defendants Benz and Williams are the representatives of all of the members of the Sailors' Union of the Pacific.

III.

Defendants' said picketing was for an unlawful purpose. There was no labor dispute between plaintiff and defendants or the Sailors' Union of the Pacific or between plaintiff and any members or former members of the crew of the SS Riviera, or between the Sailors' Union of the Pacific and members of the crew of the SS Riviera. Nor was there any labor dispute within the definition of any Federal statute. Defendants' said picketing was not a lawful exercise of their right of free speech.

IV.

Defendants' said picketing was the sole proximate cause of plaintiff's said damages. The failure of employees of independent contractors to cross defendants' picket line was not an independent intervening cause of plaintiff's damage.

V.

Plaintiff is entitled to have judgment and decree entered in its favor, for the sum of $38,700.00, together with its costs and disbursements, against William Benz, Robert Williams, each member of the Sailors' Union of the Pacific and the Sailors' Union of the Pacific, an unincorporated association of seafaring men with its present headquarters in San Francisco, California, and each and all of them; and to have execution issue thereon against the individual property of William Benz and Robert Williams and against any property held by the Sailors' Union of the Pacific or for the use and benefit of the members of the Sailors' Union of the Pacific, whether held in the name of the association

or by others for the association; but not to have execution thereon against the individual property of any member of the Sailors' Union of the Pacific not individually made a party herein, judgment against such members being entered solely for the purpose of establishing res judicata as to issues litigated herein.

Dated this 28th day of October, 1954.

/s/ GUS J. SOLOMON,
District Judge.

Lodged August 17, 1954.
[Endorsed]: Filed October 28, 1954.

In the District Court of the United States
for the District of Oregon
Civil No. 6699

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

WILLIAM BENZ and ROBERT WILLIAMS, Individually and as the Representatives of All of the Members of the Sailors' Union of the Pacific,

Defendants.

FINAL DECREE

This cause came on for trial before the undersigned Judge of the above-entitled court, plaintiff appearing by its attorneys, Wood, Matthiessen,

Wood, and Tatum, John D. Mosser and Gunther F. Krause; and defendants appearing by their attorneys, K. C. Tanner and Richard R. Carney. Counsel for the parties prepared a pretrial order and entered into a stipulation for the trial of this cause with Civil Nos. 6745 and 6735, and for the reception herein of transcripts of testimony and exhibits previously taken in these and certain previous cases heard by the Court. The Court entered said pretrial order, approved said stipulation, considered such testimony and exhibits and the other evidence offered by the parties, and considered the briefs submitted by counsel. The Court now being fully advised and having made and filed its findings of fact and conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $38,700.00, together with its costs and disbursements of and from William Benz and Robert Williams, each member of the Sailors' Union of the Pacific, and Sailors' Union of the Pacific, an unincorporated association of seafaring men with its present headquarters in San Francisco, California, and each and all of them; and

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of William Benz and Robert Williams and against any property held by the Sailors' Union of the Pacific, or for the use and benefit of the members of Sailors' Union of the Pacific, whether held in the name of the as-

sociation or by others for the association; but execution shall not issue hereon against the individual property of any member of the Sailors' Union of the Pacific, other than those heretofore individually named and made parties herein.

Dated this 28th day of October, 1954.

/s/ GUS J. SOLOMON,
District Judge.

Lodged August 17, 1954.

[Endorsed]: Filed October 28, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Plaintiff Above Named, and to Wood, Matthiessen, Wood and Tatum, and John D. Mosser and Gunther F. Krause, Its Attorneys:

You, and each of you, will please take notice that the defendants above named do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Final Decree entered in the above-entitled suit on the 28th day of October, 1954, by the United States District Court for the District of Oregon, and said defendants appeal from said Final Decree and from each and every part thereof.

/s/ RICHARD R. CARNEY;

/s/ TANNER & CARNEY,
Attorneys for Defendants.

Service of Copy acknowledged.

[Endorsed]: Filed November 26, 1954.

[Title of District Court and Cause.]

No. Civ. 6699

BOND

Know All Men by These Presents: That we, William Benz and Robert Williams as principals, and Mabel Doane as surety, are each held and firmly bound unto Compania Naviera Hidalgo, S. A., in the sum of Two Hundred Fifty ($250.00) Dollars, lawful money of the United States of America, to be paid to the said Compania Naviera Hidalgo, S. A., which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Now the Condition of this obligation is such that if the above bounden William Benz and Robert Williams as principals and Mabel Doane as surety shall well and truly pay or cause to be paid unto the above-named Compania Naviera Hidalgo, S. A., the costs adjudged herein if the appeal is dismissed or the judgment affirmed, or such costs as the appellate court may award if the decree is modified, then this obligation shall be void; otherwise to remain in full force and effect.

Witness our hands and seals this 26th day of November, 1954.

/s/ WM. BENZ,

/s/ ROBERT T. WILLIAMS,
Principals.

/s/ MABEL DOANE,
Surety.

State of Oregon,
County of Multnomah—ss.

I, Mabel Doane, being first duly sworn, on oath depose and say: That I am a resident of said county and state, and a freeholder therein, and am worth the sum of $500.00 over and above all my just debts and legal liabilities, and exclusive of property exempt from execution, so help me God.

/s/ MABEL DOANE.

Subscribed and sworn to before me this 26th day of November, 1954.

/s/ RICHARD R. CARNEY,
Notary Public for Oregon.

My Commission Expires March 22, 1958.

Service of Copy acknowledged.

[Endorsed]: Filed November 26, 1954.

[Title of District Court and Cause.]

Civ. No. 6699

ORDER

This matter coming on regularly for hearing upon the motion of the defendants for an order authorizing and directing the clerk of this court to transmit to the United States Court of Appeals for the Ninth Circuit all of the exhibits introduced at the hearing of the above-entitled cause, and it appearing to the court that it is impracticable to print said exhibits, and the court being fully advised,

It Is Hereby Ordered that the clerk of the United States District Court for the District of Oregon be and he hereby is authorized and directed to transmit to the United States Court of Appeals for the Ninth Circuit all of the exhibits introduced at the hearing of the above-entitled cause.

Dated in open court February 17, 1955.

/s/ GUS J. SOLOMON,
Judge.

[Endorsed]: Filed February 17, 1955.

United States District Court, District of Oregon
Nos. 6699, 6735, and 6745

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

WILLIAM BENZ, ROBERT WILLIAMS, Etc., Et Al.,

Defendants.

IN ADMIRALTY

Monday, March 22, 1954

Before: Honorable Gus J. Solomon, District Judge.

Appearances:

GUNTHER F. KRAUSE, and
JOHN D. MOSSER,
Of Proctors for Plaintiff.

KNEELAND C. TANNER, and
RICHARD R. CARNEY,
Proctors for Defendants.

TRANSCRIPT OF PROCEEDINGS IN RE PRE-TRIAL CONFERENCE

The Court: Have the pre-trial orders been signed?

Mr. Carney: Yes, sir.

Mr. Mosser: They have, but in the case of No. 6735, Compania Naviera Hidalgo against MacRae the order was prepared by Mr. Carney, and he left out the denial of the contentions, and we just want to have it in the record that we do deny their contentions.

The Court: You can insert that by interlineation, or if you fail to do so the record will show that the contentions of the plaintiff are denied by the defendant, and the contentions of the defendant are denied by the plaintiff.

Mr. Mosser: Also on the stipulation that was just presented today on the issue——

The Court: Which stipulation are you talking about?

Mr. Mosser: The one in your left hand.

The Court: All right, the one dealing with subsequent events.

Mr. Mosser: Yes, they have in there that if that testimony is deemed relevant and material the defendants may put on evidence as to it by deposition, and we would, of course, want it understood that we can seek evidence in reply or rebuttal to anything they might produce.

The Court: Is there any objection to that? [2*]

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Carney: No.

The Court: Let the record so show, that that may be done.

Now, what else? Do you want to start offering your exhibits? Does the other stipulation set forth all the written evidence that may be admitted to without objection?

Mr. Carney: Without objection to its identity, yes.

The Court: I understand that the stipulation dealing with identity of documents provides that all of those documents therein listed on behalf of the plaintiffs and the defendants may be admitted, subject only to the objections of relevancy and materiality.

Mr. Carney: That is right.

Mr. Tanner: That is right.

Mr. Mosser: Are you willing to go that far, Mr. Carney? That is certainly true as far as all exhibits which have been previously offered and received in Civil No. 6699, 6652, 6661, 6735, and 6745, but some of these are new exhibits being offered for the first time, and as to those I had also reserved in the stipulation objections as to competency. I do not know that we had any, but at the time I drew this Mr. Carney was not sure he was willing to go that far.

The Court: Well, let us cover the exhibits that have [3] been introduced in the prior proceedings, and then the plaintiff can offer the others separately, and if there is any objection as to the competency then you can make your objection.

Do you have your exhibits marked? Offer your exhibits right now. Which ones?

Mr. Mosser: All right, we are offering Exhibits 1 to 23, inclusive. One and two are transcripts.

The Court: Plaintiff offers Exhibits 1 to 23 inclusive. Tell me to which of those exhibits do you object, if any?

(Discussion off the record.)

The Court: Plaintiff's Exhiibts 1 and 2 are admitted with the understanding that in the event this case is appealed that in lieu of the transcripts themselves a narrative statement may be filed with the Court of Appeals. I understand that a narrative statement has already been prepared which is substantially satisfactory to all parties. It is further understood that in the event that the parties themselves are unable to agree on the exact wording of their narrative statement that those points in dispute shall be submitted to me for final determination, and my rulings shall govern the question of whether or not the narrative statement shall be stipulated, but reserving to either party the right set forth the testimony in question and [4] answer form as to that portion of the statement in dispute, and the cost of the printing of the questions and answers shall be borne by the party against whom I have ruled.

Is that clear?

Mr. Tanner: That is satisfactory.

Mr. Krause: I am not sure about that against whom you rule. Either party in this case may print

any portion of the testimony that has been reduced to narrative form in question and answer form if he wants to do it at his own expense.

Mr. Tanner: That is substantially what he said.

Mr. Krause: Yes, well, that is our understanding.

The Court: The reason I made the statement is that I understand that in order for a narrative statement to be submitted in lieu of a transcript there must be a stipulation, and my acting as an arbiter is solely for the purpose of insuring that if I rule in favor of a certain party that the other party will sign the stipulation.

Mr. Krause: That is correct.

Mr. Tanner: That is right.

Mr. Krause: That is agreeable.

The Court: What about the others?

Mr. Carney: The charter and the articles, that is 3 and 4, were already in the other case. There is [5] no question about those.

The Court: Three and four are admitted.

Mr. Carney: And 5, 6, and 7 are admitted.

The Court: Are admitted?

Mr. Carney: Yes.

The Court: Well, they may be admitted.

Mr. Carney: No. 8, I know that was offered in the wage libel, but I do not think we admitted that at that time, and I do not think we will now. That was put in for the purpose of showing that they put clean linen on the vessel sometime before they got to Portland.

Mr. Mosser: That was received in that case.

The Court: Eight is not admitted at this time?

Mr. Carney: Eight is not admitted. Nine is not admitted either. Ten is not admitted. Eleven is admitted.

The Court: Eleven may be admitted.

Mr. Carney: We had some discussion about the Makiki statement in the other case. The point is this: We might admit that that is a statement which was made concerning what has occurred on the Makiki, but we do not admit that the Sailors' Union of the Pacific distributed it in this case. As I remember the evidence, when that came in the only testimony was that one of the crew members had it in his pocket, and there was no evidence in the case where [6] he got it or that he had had it from someone from the Sailors' Union of the Pacific.

The Court: If you will recall, in the wage case I dismissed the SUP.

Mr. Tanner: That is right.

The Court: On the ground that there was not evidence at that particular time to indicate that the SUP were responsible for the activities of the crew members.

Mr. Tanner: Now, here is the thing, Judge, that goes to the question of the competency of some of this matter. The SUP is not a party to any one of these suits.

The Court: I thought that the SUP was made party or attempted to make them a party in the Benz case.

Mr. Tanner: No, the SUP is not a party in any one of these cases.

The Court: Is not Benz part of the——

Mr. Tanner: He is a business agent, but they have not sued the Sailors' Union of the Pacific. There has been no attempt to sue.

The Court: That is a problem that we are going to have to determine, whether or not the plaintiff got jurisdiction over the SUP by suing Benz and one or two others.

Mr. Tanner: No, that is not a problem here at all. They are here on the theory of a class suit, and they named Benz and some other individuals, but they are not [7] seeking, and they have not made any attempt by a complaint or otherwise to take judgment against the SUP in any of these cases. I think that is true, isn't it?

Mr. Krause: Well, the SUP, you have got a lot of problems. The SUP, how do you sue them? The SUP is a voluntary association, and we have sued all of the members of the SUP as represented by these defendants.

The Court: You have never named the SUP though?

Mr. Krause: No, we have not in any of these damage suits because you have the problem of whether or not you can sue a voluntary association by naming them under their name and then serving them through some of their officers because here in Oregon the question is left up in the air.

Mr. Tanner: You did not do it, Gunther?

Mr. Krause: No, we have not.

Mr. Tanner: All right then, why deny it? Why

not be frank and say that because of the problem that you never tried to sue the SUP as such?

Mr. Krause: We certainly are suing the SUP as such since we sued all of their members in a class suit. That is the way other unions have been sued, and we are suing these men as representing all of them.

The Court: As I understand it, Mr. Tanner is making an objection to an offered exhibit on the ground the SUP is not named as a party [8] defendant?

Mr. Tanner: That is right.

The Court: Now, that is the Makiki?

Mr. Tanner: That is the Makiki.

The Court: That is No. 12. Do you object to 12?

Mr. Tanner: Yes, to its competency, yes, we object to it here. The same is true of the SUP Constitution.

The Court: All right, 13?

Mr. Mosser: I call your attention to the fact that both of those things are covered by the stipulation which has been signed and to which the only objection is relevancy and materiality.

The Court: That is what he was objecting on. Let us not have any argument on these things now. I think he is entitled to say which exhibits he will not agree to their submission. Go ahead.

Mr. Tanner: Fourteen is all right.

The Court: Fourteen is admitted.

Mr. Carney: 6652 is the Wage Libel, isn't it?

Mr. Mosser: Yes.

Mr. Carney: Now, we will object to that, and so we will object to 15 and to 16 and to 17.

The Court: 15, 16, and 17. And to 18?

(Discussion off the record.)

Mr. Carney: We had better let those in. We will leave [9] 15, 16, 17, and 18, we will let them in.

The Court: All right, I do not know what is 6652.

Mr. Tanner: That is the wage libel. At least we won that lawsuit.

The Court: What is 6661?

Mr. Carney: 6661 was the libel or damage suit brought against SUP.

The Court: Do you want that in?

Mr. Carney: Yes.

The Court: 19, 20, 21, and 22 are admitted.

Mr. Carney: I do not see any reason for the Court's opinion being part of the evidence.

Mr. Tanner: It is the same Court we have got now.

Mr. Carney: I do not see how it is relevant in evidence.

The Court: I do not think so either, and I will tell you why. The Court of Appeals has indicated that this case is to be tried de novo.

Mr. Carney: That is right.

The Court: In view of that fact, what is the relevancy of the oral opinion I made in that case?

Mr. Krause: Well, in the first place, we do not agree that it was to be tried de novo.

Mr. Tanner: They said so.

Mr. Krause: They said they were going to reserve—that [10] is, their dismissing the suit up there was not affirming or rejecting any findings made by the trial court, but they did not say——

Mr. Tanner: Here is the opinion right here. You did not read it very carefully.

Mr. Krause: How could the Court of Appeals——

Mr. Tanner: Now, Gunther, I want to refresh your recollection on the theory on which we were in here before. You recall when we were making up this record that I kept insisting that for the purposes of this hearing certain things would be admitted. Now, that record with respect to all those admissions is replete with the limitation with respect to these admissions that we were making to make a disposition on temporary restraining order. Now, we never at any time foreclosed ourselves on what the law reserves to a party when a case comes on for trial on the merits.

The Court: You are objecting to 23. Now, let us go to the rest of them. You will have an opportunity to argue later. We are trying to find out which exhibits may be admitted without any controversy.

Mr. Carney: With respect to 23 to 34, they are a group of newspaper clippings which the plaintiff is going to put in to show in general what the charter rates were at that [11] time.

Now, we are willing to admit those as long as they are willing to allow us to put in evidence other

articles in the Marine Guide showing the charter trade and what happened to it.

Mr. Mosser: That is No. 83 in this list that he is referring to, and we are willing to make that stipulation.

The Court: All right, 24 to 34, inclusive, are admitted.

Mr. Carney: On these affidavits, all these affidavits are the same, and it seems to me that it makes the record quite clumsy when you have these affidavits from 35 through number 50 that are identical.

The Court: Is that true?

Mr. Mosser: Virtually. I believe there is a slight difference in the affidavits of two of those men, King and Highberg from all of the others.

Mr. Carney: Just in that where they signed on the vessel.

Mr. Mosser: No, King and Highberg were your pickets and were not members of the crew, but aside from that, if they are willing to stipulate to all of these men signing identical affidavits, that would be sufficient for the record.

(Discussion off the record.)

The Court: 35 to 50, inclusive, are admitted with the understanding that if the case is appealed 35 will be [12] included in the documents to be sent to the Court of Appeals with the statement that it was signed by the persons named in all of the other exhibits 36 to 40, inclusive, and 43 to 50, inclusive, and that 41 and 42 may also be included in the exhibits to be mailed to the Court of Appeals for the reason that they appear to be different.

What about 51?

Mr. Carney: That is the transcript in the possessory libel, is it?

Mr. Mosser: No, that is the transcript in the MacRae case.

Mr. Carney: Well, we have no objection to that, but we would like the same understanding that we had as to 1 and 2.

The Court: Is that agreeable?

Mr. Mosser: Yes.

Mr. Krause: Yes.

The Court: It may be admitted under those conditions.

Mr. Tanner: Well, there again, with respect to 52 we have the same objection.

The Court: 52 and 53 are objected to?

Mr. Tanner: Yes, for the same reasons that we objected to 13.

The Court: All right; 54? [13]

Mr. Carney: I do not know what telegram that is, is that the one that said a certain captain relieved and another one put on?

Mr. Mosser: No, I think that was the ownership thing, and I think all the facts contained in it have already been, as far as relevancy, have already been admitted in the pre-trial order.

Mr. Carney: Why don't you just withdraw that exhibit?

The Court: Just object to it, and then we won't have——

Mr. Carney: Objected to.

This transcript of the proceedings in 6745, that is the Jeff Morrison case.

The Court: It is admitted on the same objection as 51 and 52 and subject to the same conditions.

Mr. Carney: Yes.

The Court: 56?

Mr. Carney: 56, which photograph is that? That must be a photograph—the photograph referred to there is part of the transcript. I understand that when we were admitting some of these transcripts that the exhibits that came with them would be included.

Mr. Mosser: If so, everything you objected to is already in because everything you objected to or accepted to have already been offered and received.

(Discussion off the record.) [14]

The Court: 54 is withdrawn. What about the photograph in 6745? Have you any objection?

Mr. Carney: We have no objection.

The Court: It may be admitted.

Do the defendants offer 75 to 84, inclusive?

Mr. Tanner: Yes.

The Court: Tell me to which you object?

Mr. Mosser: We object to the competency of No. 84, also to its relevancy and materiality.

The Court: 75 to 84 are admitted. Do you have anything else?

Mr. Carney: Yes, we have one other exhibit which we would like to include, and that is the affidavit of Jeff Morrison which was attached to a motion to dismiss in the case. That was 6745. No objection to that?

Mr. Mosser: No objection.

Mr. Carney: I would like to insert that by interlineation.

The Court: I will just put that in the affidavit of Jeff Morrison.

Mr. Mosser: I would like to clarify two points on these transcripts. One is, it is my understanding that we are admitting the evidence that is contained in those transcripts and not arguments, things of that nature and Mr. Tanner just said it was his understanding that all of [15] the exhibits received in those transcripts were coming in, yet, he has raised an objection to several of those exhibits as we went through the list here. I want to clear that up.

Mr. Carney: Well now, that is consistent. It is all right to admit that testimony was given in this case just as in those cases, but if they offered as an exhibit there we want to reserve our objection to it.

The Court: All right, 85 is admitted.

I am signing the pre-trial orders in 6735—the MacRae case has been misnumbered. It should be 6735. I am signing the pre-trial order in 6735, 6745, and 6699. I understand that in none of these pre-trial orders have the exhibits been set out for the reason that in a separate stipulation the exhibits have been stipulated, that is, the exhibits which each side proposes to offer have been set forth.

Mr. Tanner: That is right.

The Court: And that stipulation covers all three cases; therefore, the stipulation is to be regarded as part of the pre-trial orders in each of the numbered cases. [16]

STYLIAMOS PANGAS

produced as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Mosser:

Q. Captain Pangas, what is your relation to the Compania Naviera Hidalgo, S.A., the plaintiff in this case?

A. I represent the Southern Star Shipping Company of New York, which is agent of that company, Compania Naviera Hidalgo.

Q. They were the agent for that company in the fall of 1952 when the Riviera was at the Port of Portland? A. That is correct.

Q. What is your job with Southern Star Steamship Company?

A. Well, I am in the operating department and in the chartering. I help in chartering, too.

Q. It is part of your job to prepare charters for ships and enter into chartering agreements for ships? A. That is right.

Q. You are familiar with the charter market at various ports in which you want to operate?

A. I am.

Q. You keep yourself familiar with that as part of your job? A. Yes, sir.

Q. Are you familiar with what the rate on bulk cargo wheat from the Port of Portland or other Pacific, North Pacific ports on [17] the North

(Testimony of Styliamos Pangas.)

American continent, charters carrying that type of cargo from those ports to ports in the Orient, and particularly India; are you familiar with those rates from the period from October 14 to November 26 of 1952? A. Yes, I am.

Q. Can you tell us what those rates were, and if there was a difference between cargoes and ports, specify what that was?

A. What month loading do you mean?

Q. Well, if there was a change, start at October 14th. What was the market about that time?

Mr. Tanner: Your Honor, may I be heard? I would like to facilitate this. There are matters of record, they were in writing, and we could have the writing here if counsel examines it, if that is what he wants to show, of those rates as published in the Marine Guide.

Mr. Mosser: We will let you offer your evidence.

Mr. Tanner: If it is a matter of record, the writing would be the best evidence.

The Court: He is being qualified as an expert to testify as to the market. There may be no written evidence which would show what counsel wants to bring out in the question.

Q. (By Mr. Mosser): The question again, Captain, starting on October 14th——

Mr. Tanner: Of what year?

Mr. Mosser: 1952; that bulk cargo, particularly of wheat or [18] grain, from North Pacific ports, particularly Portland, to Oriental ports, particularly those in India.

The Witness: Well, it was for September load-

(Testimony of Styliamos Pangas.)

ing, it was 17 shillings September loading, and October loading of wheat, October loading were 88 shillings, and November loading also 85 shillings, but from the end, or middle, rather, of October the market rose sharply to India, especially to India. The market rose up sharply from 85 to 90 for east coast of India, and 97/6 for west coast of India.

Q. (By Mr. Mosser): Now, on those figures that you are giving, those are shillings?

A. Shillings.

Q. 97/6 is 97 shillings and sixpence, and that is per ton of cargo? A. That is per ton loaded.

Q. What happened to that market during the period November 28 through December 8, 1952?

A. Well, before December loading it was 97/6, and January was the same; February was 95, I think.

Q. That market that you refer to changes fairly rapidly, doesn't it, Captain?

A. Well, it depends on the offering of tonnage.

Q. In other words, it may be up one day and down the next, up again the next day, something like the stock market, or doesn't it fluctuate that much? [19]

A. Not as quickly, not as fast, but in a month there may develop decline or upsurge in the market. As it happened in that period, in October, in the beginning of October, the market was 80 and 85, and then on the 20th of October it was—for November it was 85, too, but for December was 90 for the

(Testimony of Styliamos Pangas.)

west coast of India and 97/6 shillings for the west coast of India.

Q. Now, the Riviera actually had a charter to carry wheat from Portland to ports of the east coast or west coast of India; did it not, at that time?

A. It was for the west coast of India, for Bombay. It was declared, I think, before completing loading or after completing loading, it was declared Bombay as the discharge of freight, but it was 82/6, your freight, minus sixpence, because the port of discharge was declared just after loading or before loading.

Q. Was the charter made during this period that we have been talking about, or had it been made previously?

A. The charter was agreed to in July.

Q. That accounts for the fact that it was at a lower rate than the current rate during this period?

A. Oh, yes, in August was even lower, and in July, September, was even lower.

Q. Do you know what the cargo was that—what the capacity of a liberty vessel of this type, Riviera's type, is as far as [20] carrying that type of cargo, grain cargo?

Mr. Tanner: Your Honor, what is the materiality of what other ships, what the capacity of other ships is?

Mr. Mosser: Well, I will limit it to the Riviera.

Q. Do you know the capacity of the Riviera for carrying grain cargo of that type on a voyage of that nature?

(Testimony of Styliamos Pangas.)

Mr. Tanner: Well, of course, your Honor, I want the Court to bear in mind that so far as we are concerned, all this testimony is immaterial, so far as we are concerned.

The Court: I appreciate that, or at least you do not want me to consider this when I render my decision.

Mr. Tanner: Well, we were no party to those shipping arrangements.

The Court: I think the evidence is admissible, though, but what I want to find, what was your charter with the company here in Portland? What was the name of the charterer of that vessel?

The Witness: The charterer was the Indian Government.

Mr. Mosser: Indian Supply Mission.

The Court: Indian Supply Mission?

Mr. Mosser: Yes, your Honor.

The Court: How many tons did they guarantee?

The Witness: It was up to us to load the vessel up to ninety-five hundred, five per cent more or less of it.

Mr. Mosser: I have the charter here if you wish to read [21] it, Captain.

The Witness: May I?

The Court: The charter would show, then. What is it?

Mr. Tanner: Is that one of the exhibits?

Mr. Mosser: It is one that is listed here in the list that we just went over, number three, to which you had no objection.

(Testimony of Styliamos Pangas.)

The Court: It is already in evidence, then.

Mr. Tanner: I would like to keep the record down to a minimum, if I could, your Honor.

(Colloquy.)

The Witness: It was up to us to load between eight thousand, eight thousand one hundred eighty tons up to ten thousand one hundred twenty maximum.

Q. (By Mr. Mosser): Who had the option of specifying how much cargo was to be loaded, the ship or the shipper? A. The owner.

Q. The owner had the option of saying how much cargo within that range he would take?

A. That is right.

Q. What was the capacity of the Riviera for a voyage from Portland to Bombay at that time for carrying grain?

A. Well, the capacity of the Liberty vessel as the Riviera was, it is about ten thousand eight hundred tons. It depends on how many bunkers you take on a vessel to determine how much cargo you load. For a trip to India from Portland, [22] Oregon, considering that you should have at least eleven hundred tons of bunkers or at least one thousand, you could load on the vessel about ninety-four hundred or five hundred even.

Q. When you say at least a thousand, would that be enough bunkers to get you to India?

A. Well, to get a Liberty vessel of 25-ton consumption a day to India it would take about eleven

(Testimony of Styliamos Pangas.)

hundred ton of bunkers. So sailing—the vessel bunkers on the way into Singapore, docks before Singapore, so the owner can make his own arrangements as to the more profitable loading of the vessel.

Q. As a matter of fact, from your experience, would it have been more profitable to have bunkered fully here at Portland before starting that voyage, or would it have been more profitable to take on more bunkers somewhere on the way?

A. The vessel, anyway, couldn't have taken more than eleven hundred tons from Portland; double bunkers, it can carry only about eleven hundred tons bunkers.

Mr. Tanner: Your Honor, I think the record ought to show our objections to this entire line of testimony.

The Court: Very well.

Q (By Mr. Mosser): Are you familiar with the operating expenses of the Riviera as a vessel, that is, the expenses that it would incur at sea no matter what voyage it was, the [23] wages, subsistence of the crew, things of that kind; are you familiar with those? A. Yes.

Q. Would you give us a rundown of what those expenses are, leaving out now anything that just pertains to this voyage, such as your port charges and so on, what make up the daily expenses of the Riviera? A. Well, it is about——

Mr. Tanner: Well, now, your Honor, I think we are entitled to have that restricted to a particular

(Testimony of Styliamos Pangas.)

time. He is talking about the present in the question.

Mr. Mosser: All right, then, let us restrict it to the period from October 14, 1952, through December 12, 1952, and if there would have been any changes during that period, indicate so in answering the question.

A. I do not think there was any change since then.

The Court: Go ahead.

Q. (By Mr. Mosser): Give us the figures for that time, then.

A. At that time the figure was—I can state roughly, not absolutely—but it was between $380 per day to $390 per day.

Q. What did that include?

Mr. Tanner: Between what to what?

Mr. Mosser: $380 to $390.

Mr. Tanner: Oh, I see, between three hundred eighty and [24] three hundred ninety.

The Witness: That includes wages of the crew, Master and the crew, complement, insurance. That is Marine War Risks, protection indemnity for the crew and the owner, and then subsistence and then supplies, deck to the engine and the steward's department, equipment, and then repairs.

Q. Does it include your bunkers?

A. No bunkers, no.

Q. What was the cost of a ton of bunkers here at Portland at that time, October 14 through December 12, 1952?

(Testimony of Styliamos Pangas.)

A. It was about $12.90 or $13.00, something like that. It was per barrel $1.85 or $1.90 per barrel.

Q. Do you know what the stevedoring or other port expenses for a cargo of that type would have been at Portland and at Bombay at the other end of the voyage at that period?

A. Well, in Portland, erecting shifting boards work—in order to load grain we have to fit a vessel so the fittings cost one dollar per ton loaded. That is about—if you load ninety-five hundred it is ninety-five hundred fitting, erecting of fittings.

Q. Does that include your stevedoring work in putting those fittings in?

A. No, stevedoring is twenty-nine cents per ton loaded. That makes it about $12,500 altogether loading expenses [25] at Portland, Oregon. Of course, every port has its own tariff.

Q. What would it be for discharging that cargo at Bombay, India? A. At Bombay?

Q. Unloaded November or December, 1952?

A. It was about $2,500 discharge expense over there. Of course, you could take back some of your expenses in fittings by saving, by selling over there the lumber in India.

Q. You could sell the lumber that had been used to line the vessel?

A. Yes, you could sell—it was not the practice because you take the wood price of lumber in India, and that brings that fitting expense at about $2,000 dollars lower instead of expense of $12,500 or $10,500.

(Testimony of Styliamos Pangas.)

Q. When you get a charter of this type, do you pay commission to any broker or anything of that kind that would reduce the total freight you receive?

A. Yes, yes.

Q. Is that a standard percentage for those commissions?

A. Well, at that time the charters was one per cent.

Q. One per cent. Are there any other expenses that you would have in connection with a voyage of that nature?

A. Well, if the receivers of the cargo or the shippers will land or discharge the vessel sooner than agreed upon by the [26] charter, the owner has to pay dispatch money to them, and it depends how much sooner the loading or the discharging was effected.

Q. On a charter of the type we have been talking about for that period, what would be the range of possible dispatch that could be payable from the ship owner to the consignee for prompt unloading?

A. I would say, put that loading, discharging at $2,000.

Q. That would be about average for the conditions at those ports?

A. Well, if you pay dispatch, you save from your expenses.

Q. How long does a voyage of that type take if made during the months of October and November or November and December with a vessel of the

(Testimony of Styliamos Pangas.)

Riviera's type or the Riviera itself, if you know its cruising speed?

A. Well, when we calculate a voyage of such type, we figure 39 days for the actual voyage and one day for bunkering, and you get 40 days. Then loading may be effected in six to eight days and the discharging about eight to ten days, so it is, altogether it is forty, forty-eight—fifty-six days, fifty-seven days.

The Court: You told us that the bunkering cost about $12.90 per ton, but how much bunkers do you use a day on a vessel of that kind?

The Witness: Twenty-four to twenty-five ton, your Honor. [27]

The Court: Proceed.

Q. (By Mr. Mosser): On bunkers, I just wanted to be sure. Is eleven hundred tons enough to make a full voyage, or you said that would be the most they would load here. Would that be taking into consideration further bunkers on the way somewhere?

A. Well, forty days' voyage at twenty-five tons per day is just one thousand tons. Then, of course, you should have on arrival about one hundred tons of bunkers, safe margin, as we call it.

Q. But the amount of bunkers you would actually need would be somewhere around a thousand tons?

A. Yes, actually, but the vessel replenishes some place, Singapore, Terakan.

Q. Well, now, from the figures you have given

(Testimony of Styliamos Pangas.)

us, have you made a computation as to what the profit or loss for a voyage of that type would be, assuming that it took, well, let us say fifty-six or seven days and had the expenses that you have outlined and a freight of, well, this charter was, what did you say the charter of the Riviera actually was——

Mr. Tanner: Now, your Honor, he has not testified about the time that that vessel took on a particular time on those particular months at all.

The Court: Yes, he did.

Mr. Mosser: Yes, he has.

The Court: That is what he testified to during this period; he thought the voyage would take about thirty-nine—he [28] said he thought the voyage would take about thirty-nine days plus one day for lining, six days for loading, eight to ten days for unloading.

Mr. Tanner: Yes, your Honor, but he knows that was not the actuality. He says that was their estimate. Now, they actually left here, and he knows about the delays that they had with respect to repairs which had to be made, and he is perfectly familiar with, and the testimony he has given was his estimate about what it would take, not what it actually did take, and he knows what it took. He knows about these delays, and he knows the repairs that they had.

Mr. Mosser: The point is, Mr. Tanner, that we are assuming this ship sailed from there October

(Testimony of Styliamos Pangas.)

14th. In other words, we are pressing damages for a voyage that would have been made starting October 14th, or any day thereafter on the day the picket line would have been made. It is not actually what happened on the voyage. It is not actually what happened on the voyage that started in December.

Mr. Tanner: Well, now, your Honor, just one other observation. The ship actually left, but it had failed or had some mechanical failures for which you cannot blame us. That is for certain. Now, they want us to pay for a type of voyage that they expected when, in actuality, they did not have that kind of a voyage. They had a lot of trouble in [29] respect to the vessel when it got halfway over, and they had a lot of delays, and he knows it.

Mr. Krause: Let me get this question straight in mind as to when our damages are to be pressed.

We were prevented from using this vessel by these unions from October 14th to December 12th. We were entitled to have loaded that vessel here in six or eight days following the 14th of October, assuming we had gotten rid of our crew trouble up to that point, and we had by the 14th of October; therefore, we were entitled to sail then, not on December 25th, when we ran into much the same weather that sank the Pennsylvania that year. That was during the same period of time.

Mr. Carney: There is no evidence in this case with respect—they went by the southern route.

Mr. Krause: Now, let me make my statement for the moment, please, Mr. Carney. We did not

(Testimony of Styliamos Pangas.)

interrupt Mr. Tanner on his. It was a different part of the ocean, it is true, but, nevertheless, we were entitled to make our voyage between the 14th day of October and the 12th of December. That would have completed our voyage in Bombay had they not delayed us. We are not starting this voyage on the 25th of December at all as far as damages are concerned, and I wanted to get this matter straight as to when we are pressing our damages. [30]

Now, it is our contention that our damages are to be based upon our loss between the 14th of October and the 12th of December, which was the date after we would have completed, had we been permitted to, loaded here, starting with the 14th of October. Now, at that time of the year obviously all of these things—they could bring in, and we could put in testimony on it as to whether that time is more favorable than December and so forth, but, at any rate, our case is that in October or November we would have made the voyage. All of this testimony has been on in October or November. We would have made the voyage in 39 to 40 days. We would have taken six to eight days to load, eight to ten to discharge, and it is for that period of time, and we believe we are entitled to have damages.

We have all of our costs in there, costs of operation during that period. We cannot take costs of operation on the voyage starting on December 25, and we are not proposing to, but we are taking the length of time, the average length of time for a ship of this character, a 10-knot ship, between Portland

and Bombay carrying 9,500 tons of wheat, bunkering, as he said, at some point on the route or taking their full bunkers from this coast, and so we have the cost of operation per day for the period of time, the period of time that the pickets prohibited us from sailing, and the [31] Captain has given all the facts in that regard and we are not proposing to, if Mr. Tanner has that in mind, to show what our actual costs were on a voyage starting on Christmas Day, 1952.

The Court: I think I am going to hear the testimony.

(Colloquy.)

Q. (By Mr. Mosser): Again, Captain, the question was for the voyage during the period in October to December, 1952, made by the Riviera with the cargo of grain, 9,400 tons loaded at Portland and carried to Bombay under the conditions that you have described, the expenses that you have described, and the freight rate that you have described for the Riviera, what would its profit or loss have been either per day or for the whole period?

A. It is about $46,000 net profit, and it is about $760 to $765 per day.

Mr. Mosser: You may examine.

Cross-Examination

By Mr. Carney:

Q. You say you have been employed by the Southern Shipping Company. How long have you been with them?

A. I am six years with them.

(Testimony of Styliamos Pangas.)

Q. During that period of time, has a good part of your work been with these charters and these charter rates? [32]

A. I make the calculations for voyages. That is part of my job.

Q. And so you are quite familiar with charter rates? A. Quite familiar.

Q. These are the charter rates for dry cargo; isn't that what they are called?

A. Dry cargo, some call it; yes, that is right.

Q. Yes, dry cargoes? A. Dry cargoes.

Q. Now, when you were talking of these different amounts of money that the charterers were getting in September, October, November, December, and so on, you were talking about the trip charter; were you not? A. Yes, that is right.

Q. As distinguished from the time charter?

A. That is right.

Q. In other words, the trip charter is the amount paid for the voyage; it is so much per ton for the voyage no matter how long it takes?

A. That is right.

Q. In early 1951, about what would you say were the charter rates, in 1951? A. 1951?

Q. Yes, in early 1951, January of 1951. That would be more [33] than a year before what you have told about? A. Yes.

Q. Do you remember what they were at that time, not exactly but approximately?

A. Well, they were much higher. I don't re-

(Testimony of Styliamos Pangas.)

member what was the freight but it was much higher.

Q. It was almost twice as much, wasn't it?

A. I don't recall. It was higher. I know it was much higher.

Q. How much higher?

A. The freight market in 1951 was much higher.

Q. Then in 1952 the market from, let us say from about July of 1951, the market started falling, didn't it? A. That is correct.

Q. And it continued to fall, didn't it?

A. Up to early October.

Q. Up to early October. Well, isn't it a fact that it kept on falling clear through December?

A. No, no.

Q. It started up?

A. The market was falling in July and August. Then it was increasing until in September.

The Court: In what year are you talking about now?

The Witness: 1952.

The Court: You are talking about 1952. I thought it was still 1951? [34]

The Witness: No; 1952.

Q. (By Mr. Carney): About, oh, July of 1951, it started to fall, and it kept falling up until the end of 1952; is that right? A. No.

Q. When would you say it stopped?

A. It started falling gradually because in 1951 it was at top levels, and then it started falling, but in the month of August it was the lowest, but it was

(Testimony of Styliamos Pangas.)

about 75 to September, early September, and then it started picking up.

Q. I see.

A. In October, early October it was 83 and 85. Then for November loading it was 85, and for December and January it was 90 to 97.6. Then in February it started falling a little, 95, and on and on.

Q. And it continued falling, then, went down again, didn't it?

A. Well, I didn't follow the market further through February to have a good recollection, but I think 1953 was—picked up, picked up in 1953 and started falling again in late 1953.

Q. In your work, most of your work is done in New York, isn't it? A. Right.

Q. Don't you consult certain journals of commerce there? Are you familiar with the Journal of Commerce which is published in New York?

A. Yes.

Q. And the Journal of Commerce publishes information concerning [35] the charters, doesn't it?

A. It does. There is another index on record just for chartering and some other marine information, but strictly—the Freight Daily Record. It is a green paper.

Q. But the information—you have had experience using journals of commerce in New York, have you not, and they report information about charters?

A. I know they do, but we get in our office that daily record.

(Testimony of Styliamos Pangas.)

Q. You get a different one, but you are also familiar with the Journal of Commerce?

A. Yes, we do.

Q. And the information that is published in the Journal of Commerce is usually accurate, isn't it?

A. Yes, it is.

Q. Well, now, if that newspaper showed an index for charters in the latter part of 1952, and if it showed that charter rates were going down, that paper would be something which is followed in the industry, isn't it?

A. Meaning the Journal of Commerce?

Q. Yes. A. Yes.

Mr. Carney: We want to offer at this time our exhibit. I don't know what the number is.

The Court: I think it is already admitted, isn't it? [36]

Mr. Carney: It is; it is number eighty-three.

(Document marked Defendant's Exhibit 83 for identification.)

Q. (By Mr. Carney): Now, the vessels that you people represent are not American flag vessels, are they? A. What?

Q. The vessels that you represent as agents are not American flag vessels, are they? A. No.

Q. In 1951 American flag vessels were carrying cargoes of grain, were they not, from the west coast to Europe? A. I think so.

Q. But when the charter market fell down quite low, then the American vessels got out of the trade;

(Testimony of Styliamos Pangas.)

is that what happened? A. I think so.

Q. And so, by September of 1952, there were no American vessels, were there, carrying cargoes of grain from the west coast of America to India?

A. Well, maybe there were, but I can't say here.

Q. There were very few, weren't there?

A. I cannot say there wasn't. Maybe there were some, but not many.

Q. Not many, not like they were in 1951?

A. No, I don't think so.

The Court: I do not think that is true, is it, Mr. Carney? [37] We have had some cases up here and I think Mr. Krause was in a case representing one of our American flag vessels that went to India with a load of grain just about the same time, the Owen Lister.

The Witness: Well, they had application, the charterers, to take some American flag vessels when the cargo was aid cargo. They were obliged to take American flag vessels.

Mr. Tanner: Sometimes, your Honor, they have to fulfill their obligations even though at a loss, but the condition got so that they had to get out of the trade.

Q. (By Mr. Carney): You were still employed by the Southern Star Shipping Company after December 25, 1952, were you not? A. Yes.

Q. In your work you were familiar with the operations of the Riviera; were you not?

A. Yes.

(Testimony of Styliamos Pangas.)

Q. Isn't it a fact that when the Riviera was en route from Portland to the Orient that it had boiler trouble?

A. No, the vessel was out from Astoria—I am glad you asked me because I wanted to reply to these gentlemen. When the vessel sailed from Astoria she was meeting continuous gales and the Captain said it was also the most, worst he had in his whole career.

Q. But I am asking in respect to its boiler [38] trouble.

A. I will come to that. And when he was near Honolulu because he was bound to take that southern course, a Swedish tanker was broken in two because there was a typhoon in the track between Honolulu and Guam. And another gave an SOS, a distress signal, and another one pulled into Honolulu with her steering gear smashed. Of course, the Riviera suffered from those continuous gales, too, and from pitching and rolling. Some salt went into the boiler, salt water, and that was the trouble, and besides this she was delayed for eight days and she was obligated—the Captain was obligated to replace the bunkers at Honolulu because he was afraid he would not have sufficient bunkers to get to Singapore, and then that is why she was delayed about fifteen days. That was all because of the bad weather and the repairs at Honolulu.

Q. Those are the only two items that held her up in Honolulu? A. That is right.

Q. Isn't it a fact that some of the crew went on

(Testimony of Styliamos Pangas.)

strike in Honolulu? A. Well, for one day.

Q. For one day? A. For one day.

Q. Wasn't it a fact that the replacements had to be sent out to the ship in Honolulu?

A. Yes, we sent about six men.

Q. You sent six men? [39] A. Yes.

Q. And you got all those men there in one day?

A. Oh, no, the ship stayed there nine days.

Q. And none of the causes of delay was the trouble it had had with this new crew?

A. No, because the crew were taken by the Immigration authorities in just one day, one day starting to give trouble. That is my understanding and belief. I am not a hundred per cent sure, but my understanding is that just as they started giving trouble they were picked up by the Immigration.

Q. Well, that was when they left the ship?

A. But the ship stayed there just to clean boilers because of salt water that went into the boilers, not because of the crew trouble.

Q. So that was nine days' delay there to repair boilers? A. Yes.

Q. Do you know how many days it did take the vessel, then, to get to India? A. From where?

Q. Well, the total time from Portland in?

A. Well, she sailed from Astoria the 25th. She arrived there the 22nd of February. That is January, February; that was 57 days.

Q. How many, fifty-seven?

A. Fifty-seven, December, January, February—yes, 57 days. [40]

(Testimony of Styliamos Pangas.)

Q. Well, now, when a vessel is paid for its taking a cargo of grain from the west coast of the United States, it is paid so much a ton; isn't that right? A. A loaded ton.

Q. Now, then, in the expenses that you figured earlier, you figured it on a period of 40 days, didn't you? A. For 60 days.

Q. Sixty days? A. Sixty days.

Q. I thought you stated it to be 40 days?

The Court: Well, he did not figure it either way. He said 56 or 57 days.

The Witness: Fifty-seven days.

Q. (By Mr. Carney): All right. Now, where did the vessel go after Bombay?

A. Well, the vessel went to Europe.

Q. She went to Europe? A. Yes.

Q. She went to Europe in ballast?

A. No, she loaded 17 or 18 days.

Q. Where did she load? A. Where?

Q. Yes. A. In India.

Q. In the same port where it discharged? [41]

A. Well, some near port.

The Court: I think I was in error. You testified it took 56 or 57 days to make that entire voyage. That includes loading and unloading. When you left Astoria you had already loaded?

The Witness: That is correct, your Honor.

Q. (By Mr. Carney): Now, just before you took on this cargo of grain in Portland, the vessel had been in Japan; wasn't it?

A. The vessel was in Japan.

(Testimony of Styliamos Pangas.)

Q. And it ran in ballast from Japan to Portland, Oregon, in order to pick up this cargo of grain, didn't it? A. I believe so.

Q. Do you know how long that voyage took?

A. About 17 days. It takes 17 to 18 days.

Q. Seventeen to eighteen days?

A. Sixteen, seventeen, it depends according to the mileage. It is between 16 to 17 days.

The Court: What was the charter hire on the trip that they took in December? Do you know what rate you received at that time?

The Witness: December?

The Court: Yes.

The Witness: From Portland, 82, 82 shillings.

The Court: Did you fulfill the obligation of the contract? [42]

The Witness: Ye., your Honor, the market went up so the charterers kept the charter. That is why they kept the charter. They fulfilled the charter, yes.

The Court: I did not realize that.

Mr. Carney: You stated that they got to another port in a nearby port from Bombay, India. Do you know what port that was?

A. I'm not familiar with that because we didn't charter the vessel. We had nothing to do with the chartering of the vessel there.

Q. The vessel was tied up though and made idle in Bombay by another walkout of the crew, wasn't it? A. I don't think so.

(Testimony of Styliamos Pangas.)

Q. Didn't part of the crew go off the vessel?

A. I don't think so.

Mr. Krause: Well, your Honor, of course, that is all hearsay. I do not think it is helping the Court or anybody else.

Mr. Tanner: Well, we can refresh his memory by showing him a few newspaper accounts.

Mr. Krause: If you refreshed his recollection, it would have to be hearsay for him, in any event, because he was not there.

The Court: I understand.

Mr. Krause: We did not want to limit you in any way, [43] but it just seems we are going much too far now.

The Court: Objection sustained.

Q. (By Mr. Carney): You were still here in Portland, weren't you, when the vessel sailed?

A. No, I was not.

Q. Were you here shortly after it sailed?

A. I departed before.

Q. The crew that sailed, then, with it, were not the same people who came in here on the vessel, were they? A. Apart from the officers.

Q. Except for the officers?

A. Except for the officers.

Q. This new crew was recruited up in Canada; isn't that right? A. Yes.

Q. They were foreign seamen? A. Yes.

Q. You were here when they came aboard; were you not; were you still in Portland when that crew

(Testimony of Styliamos Pangas.)

came aboard? A. No, I wasn't.

Mr. Carney: No further questions.

Mr. Mosser: That is all.

The Court: That is all.

Mr. Mosser: That is all the case.

(Witness excused.) [44]

The Court: That is all?

Mr. Mosser: That is our case.

Mr. Tanner: Your Honor, at this time before we adjourn I understand that they have rested their case.

The Court: Before you rest, you have offered certain exhibits. I have not admitted some of the exhibits. At this time I am going to take under advisement all exhibits not admitted which are offered.

(Noon recess.) [45]

(Trial resumed at 2:00 p.m.)

Mr. Tanner: We would like to add as an exhibit the complaint among the defendants' exhibits. That would be No. 86. The complaint is in Civil 6699. They are all alike, aren't they?

Mr. Mosser: Not exactly.

Mr. Krause: That is the complaint on which our suit is brought, isn't it?

The Court: As an admission against interest is the only way it can be admitted, and it is admitted.

Mr. Tanner: Only for that purpose.

The Court: It is offered and admitted.

Mr. Tanner: For the admissions therein contained and because it discloses a factual situation that we believe defeats the Court of its jurisdiction over the subject matter.

The Court: What is that?

Mr. Tanner: Well, I think it discloses an unfair labor practice.

(Discussion off the record.)

(Pre-trial conference concluded.) [46]

I, Gordon R. Griffiths, an official court reporter to the United States District Court for the District of Oregon, hereby certify that I reported in shorthand at the time and place mentioned in the caption sheet of the foregoing cause all proceedings had and testimony adduced at said time and place; that my said shorthand notes were thereafter reduced to typewriting under my direction, and that the foregoing transcript consisting of 46 pages is a true and correct transcript of all proceedings had and testimony adduced and of the whole thereof.

/s/ GORDON R. GRIFFITHS.

[Endorsed]: Filed February 2, 1955. [47]

United States District Court, District of Oregon

Nos. 6699, 6735, and 6745

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

WILLIAM BENZ, ROBERT WILLIAMS, Etc., Et Al.,

Defendants.

Friday, September 10, 1954.

Before: Honorable Gus J. Solomon, District Judge.

Appearances:

JOHN D. MOSSER,
Of Attorneys for Plaintiff;

KNEELAND C. TANNER and
RICHARD R. CARNEY,
Attorneys for Defendants.

TRANSCRIPT OF PROCEEDINGS IN RE HEARING ON OBJECTIONS TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

* * *

Mr. Carney: The next one I want to call to your attention is twenty-six, on the next page, and that is the one—I have the dates in there that the Riviera was in the custody of the Marshal from the 2nd of

October to the 11th of December. The only thing was that at the time that the wage libel had been filed they had filed some cross-libels, and they filed a motion to make us put up a bond, and we went up there and the Court ruled that we would not have to put up the bond, and with respect to the bond on the ship they said there would be no bond there either but the ship was still left in the custody of the Marshal.

Mr. Mosser: But there was a further stipulation regarding the necessity of a keeper. In fact, it was an agreement between ourselves.

The Court: As I recall it, they claimed that the seamen should put a bond, and you pointed out that the men did not have any money to put up a bond, and I thought about it, and then I talked to Mr. Mosser—were you there, Mr. Mosser? Were you the one there?

Mr. Mosser: I was the one that was there.

The Court: And it was agreed that you would not [45] have to put up a bond, and while the ship would remain in technical custody of the United States Marshal they could treat the ship as their own except that they would not be able to move the ship out of the jurisdiction of the Court. That was the only limitation; no keeper, no bond. Isn't that right?

Mr. Carney: It is true that it was said to be no bond, but said that it would not be moved to——

The Court: No keeper either.

Mr. Carney: It was still in the custody of the Marshal.

The Court: That was the thing that we agreed for

you because the ship was the only way that you could get satisfaction of any judgment that you may have obtained, and it was on their commitment that the ship would not be moved out of the jurisdiction of the Court.

Mr. Tanner: Isn't that technical custody?

The Court: That is right.

Mr. Tanner: The distinction between technical and actual custody, actual custody, I assume, the Marshal would have to be aboard.

The Court: Yes, and it was agreed that that would not be necessary; that the Marshal would not have to have [46] a man on board.

Mr. Tanner: I think that is substantially right, Judge, but I think they went further than that. It is my recollection, and I get this from hearsay, that the Marshal had gone through the formalities of his libel, and his notices were aboard the ship, and he placed them there, and they were never removed.

The Court: That may be absolutely right. It was decided that no keeper would be maintained. Nobody from the Marshal's office would be maintained on the ship, and that they could use the ship for any purposes they wanted provided they did not move the ship out of the jurisdiction of the Court.

Mr. Tanner: I think that is right.

Mr. Mosser: As I recall, you further stated that if it came to the time we wanted to move it you would set a bond on the facts you then had at twenty-five thousand, or we could come in and deposit for that.

One point that I want to make, that while this

was a contention of Mr. Carney's on this case no evidence at all was offered on it, and it was my plan if they had offered any evidence on technical custody or any other custody to show not only what the stipulations were concerning the vessel, but, further, that we were [47] financially able to put up a bond, and the only reason we did not was to mitigate damages in this case, and I do not want findings going in now when I do not have an opportunity to complete a case.

Mr. Carney: The entire evidence was with respect to the agreed facts and put in the record in that libel. We did not put in any return of the Marshal or any showing concerning the rest of that vessel.

Mr. Tanner: It is of record.

Mr. Mosser: But it is unlike the other records pertaining to those cases in that we did introduce into evidence in this case, and I was somewhat relying on that technical distinction.

The Court: Isn't it true that the bond was not put up in order to mitigate damages?

Mr. Mosser: That was one of my contentions. I denied it was under custody of the Marshal and stated if it was that we were financially able to put up a bond.

The Court: Did you not have a finding over here that it was to mitigate damages?

Mr. Mosser: I did not put in any because there was no evidence introduced.

* * *

[Endorsed]: Filed February 2, 1935. [48]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,
District of Oregon—ss.

I, F. L. Buck, Acting Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Pre-trial order; Stipulation concerning additional evidence; Stipulation for consolidation for trial and for pre-trial exhibits; Stipulation for use of testimony in narrative form; Order admitting exhibits; Findings of fact and conclusions of law; Order to file proposed findings and objections to findings; Defendants' objections to plaintiff's proposed findings and conclusions; Defendants' proposed findings of fact and conclusions of law; Final decree; Notice of appeal; Bond on appeal; Motion to transmit original exhibits; Stipulation re transmittal of exhibits; Order to transmit exhibits to court of appeals; Designation of contents of record on appeal; Order to include material in record on appeal; Statement of points upon which defendants intend to rely on appeal; Opinion of Judge Gus J. Solomon dated August 9, 1954; and Transcript of docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 6699, in which Compania Naviera Hidalgo, S.A., is plaintiff and appellee, and William Benz and Robert Williams, individually and as the rep-

resentatives of all the members of Sailors' Union of the Pacific and anyone that Sailors' Union of the Pacific claims to represent for the purpose of collective baragaining, John Doe, Richard Doe, John Roe, Richard Roe, James Doe and James Roe are defendants and appellants; that the said record has been prepared by me in accordance with the designation of record on appeal filed by the appellants, and in accordance with the rules of this court.

I further certify that there is also enclosed a copy of the Court's oral opinion (not filed) and reporter's transcript of proceedings, re; Pre-trial Conference of March 22, 1954, also reporter's transcript of hearing on objections to proposed findings of fact and conclusions of law of September 10, 1954. The exhibits listed as follows are being forwarded under separate cover; Plaintiff's exhibits 1 to 53, inclusive, 55 and 56, and Defendant's exhibits 75 to 80, inclusive, and 82 to 86, inclusive.

I further certify that the cost of filing the notice of appeal, $5.00, has been paid by appellant.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court in Portland, in said District this 18th day of February, 1955.

[Seal] /s/ F. L. BUCK,
Acting Clerk.

No. 14664

United States
Court of Appeals
for the Ninth Circuit.

M. D. McRAE, et al., Individually and as the Representatives of All of the Members of Local 90 of the National Organization of Masters, Mates and Pilots of America, A. F. of L.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S. A.

Appellee.

Transcript of Record

Appeal from the United States District Court for the District of Oregon

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—4-22-55

[Title of District Court and Cause.]

Civil No. 6735

PRE-TRIAL ORDER

This matter came on for pre-trial herein before the undersigned Judge of the above-entitled court on March 16, 1954, plaintiff appearing through John D. Mosser and Gunther F. Krause, of its attorneys, and defendants M. D. MacRae, William Caldwell and Viggo Hansen individually appearing through their attorneys, K. C. Tanner and Richard R. Carney, upon consideration of the matters appearing in the pleadings herein.

Nature of Proceedings

This is a suit by the plaintiff to recover damages on account of the picketing of its vessel by the defendants. A preliminary injunction was issued out of this court and an appeal was taken by the defendants to the United States Court of Appeals for the Ninth Circuit. That appeal was dismissed on the ground that the injunction was moot because the plaintiff's vessel had departed. The Court of Appeals stated that plaintiff's claim for damages "is one which it has the right to prosecute wholly apart for any claim for an injunction" and remanded for further proceedings with the statement,

> "——that what was determined by the court below in issuing such injunctions is without further force or effect, and cannot be relied

upon as res adjudicata, as creating an estoppel, or as the law of the case, all to the end that the issues relating to the claim of damages may be tried by the parties as free from the effects of such injunctions, as if the same had not been issued."

The case is now before this court on the question of damages.

Agreed Facts

The following are admitted by all the parties and no proof need be produced thereupon at the trial.

I.

At all times herein mentioned plaintiff was and is now a corporation, duly organized and existing under and by virtue of the laws of the Republic of Panama.

II.

At all times herein mentioned defendants M. D. MacRae, William Caldwell and Viggo Hansen were and now are members of Local 90 of the National Organization of Masters, Mates & Pilots of America, AFL, a voluntary, unincorporated association having a Secretary-Treasurer, and business agents. At all times herein mentioned the Secretary-Treasurer of said union, its principal executive officer, was and is now a resident of the State of California, and at all times herein mentioned the defendant M. D. MacRae was and now is the business agent of said union in the Port of Portland, Oregon, and is a citizen and inhabitant of the State of Oregon. Plain-

tiff is a citizen and inhabitant of a state or country different from that of each of said defendants.

III.

At all times herein mentioned Local 90 of the National Organization of Masters, Mates & Pilots of America, AFL, had and now has a membership upwards of 1,000 men, many of whom are employed on ocean-going vessels so that it would be impracticable and impossible to join all of said members as defendants in this suit.

IV.

In March, 1952, plaintiff became the owner of the SS Riviera, an American-built Liberty ship, and at all times herein mentioned said vessel was registered at the Port of Monrovia, and sailing under the flag of the Republic of Liberia.

V.

Between March and August of 1952, articles were signed on the SS Riviera for a voyage from Bremen, Germany, for a period of two years or until the earlier return of the vessel to a port on the Continent of Europe. A true copy of said articles is Exhibit No. ..... Said articles are on a form generally employed in the British Merchant Marine. Said articles were signed by citizens of foreign countries. The wage rates specified therein for each crew member are equal to or higher than those customarily paid for similar employment in the British Merchant Marine.

VI.

After leaving Bremen, said SS Riviera proceeded to New Orleans, Louisiana, where a cargo of grain was loaded. Said cargo was carried to and discharged at a port or ports in India where a cargo of coal was loaded. Said cargo of coal was carried to and unloaded to a port or ports in Japan. The SS Riviera then sailed in ballast to the Port of Portland, Oregon, where it arrived on September 3, 1952, and docked at Swan Island Dry Dock.

VII.

The purposes for which the vessel came to the Port of Portland, Oregon, were to complete an insurance survey, carry out repairs indicated as needed by said survey and voyage repairs, and to load a cargo of wheat for the carriage of which to India the said vessel had been chartered by its owners. A true copy of said charter is Exhibit No. ..... Both the charter for the carriage of the cargo of grain from New Orleans and from Portland were contracted for under the Aid to India Act.

VIII.

On September 3, 1952, the SS Riviera arrived at the Port of Portland, Oregon, and was docked at the Port of Portland Dry Dock at Swan Island. That thereafter and on or about September 9, 1952, twenty-four of the crew members of said vessel ceased working on said vessel, went on strike and refused to carry out the orders of the master; that on said date the members of the crew demanded their pay and their transportation to their ports of

engagement, and on said date the plaintiff, through the master of said vessel, told the members of the crew to either continue work or they were discharged.

IX.

From September 9, 1952, until September 26, 1952, said striking members of the crew picketed the vessel. On or about September 15, 1952, said striking members of the crew of the SS Riviera designated the Sailors' Union of the Pacific as their collective bargaining representative. One of such written designations is Exhibit No. .....

X.

From the date of said strike up to and including September 26, 1952, the said striking crewmen of said vessel remained aboard the vessel, continued to occupy their quarters, refused to continue to work aboard said vessel and refused to leave the vessel. On or about September 18, 1952, plaintiff filed in this court a possessory libel, bearing Civil No. 6629. On September 25, 1952, said striking crewmen were ordered by order of this court in said possessory libel to leave said vessel and said crewmen on September 26, 1952, left said vessel.

XI.

Said striking crew members or others acting for them picketed said vessel from September 26 through October 13, 1952, when they withdrew their picket line. Immediately after the withdrawal of said picket line and on October 14, 1952, members of the Sailors' Union of the Pacific, a voluntary unin-

X.

The SS Riviera sailed from Portland, Oregon, on December 23, 1952, with a crew consisting mostly of British and Canadian seamen, none of whom was affiliated with the Sailors' Union of the Pacific. That on or about January 10, 1953, when the SS Riviera reached Honolulu, T. H., fifteen of said new crewmen quit the ship in protest against the ship's "scummy drinking water, lousy plumbing facilities, continual boiler trouble and general unsanitary working conditions."

That on or about January 15, 1953, nine of said fifteen crewmen returned to the ship but six were replaced before the vessel's departure. When the vessel reached Bombay on March 7, 1953, five members of the crew quit the ship because of the inadequate food and sanitation aboard the ship.

XI.

That the licensed officers employed aboard the SS Riviera were and are eligible to join the National Organization of Masters, Mates and Pilots of America, AFL.

Plaintiff's Contentions of Law

I.

The court has jurisdiction of the parties and the subject matter.

II.

This is a true class suit and the members of Local 90 of the National Association of Masters, Mates

and Pilots of America, AFL, constitute a class and are represented by defendants M. D. MacRae, William Caldwell and Viggo Hansen.

III.

There is no labor dispute between plaintiff and any of the defendants or Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, and there is no labor dispute between plaintiff and any of said members or former members of the crew of the SS Riviera.

IV.

The findings of fact and conclusions of law entered in Civil No. 6652 are res adjudicata in this proceeding and defendants are bound thereby and estopped from relitigating the same and more specifically are estopped from denying plaintiff's Contentions of Facts II and III.

V.

Plaintiff is entitled to a judgment and decree against defendants for its general damages of $10,500.00 and its special damages of $2,500.00, and for its costs and disbursements herein, and to have execution on said judgment and decree against:

(a) Any funds or property held by or for the general use and benefit of members of Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL.

(b) Defendants M. D. MacRae, William Caldwell and Viggo Hansen, or any of them.

corporated labor organization, acting pursuant to a resolution duly adopted by said union, a true copy of which is Exhibit No. ...., commenced picketing said vessel and continued to picket it until they and all persons acting by, through, under or in concert with them, were restrained and enjoined from further picketing by this court on November 26, 1952. Thereafter, and on that day, the picket line was removed from the said vessel. On November 28, 1952, a picket line was established at the vessel by three men wearing armbands and purporting to act for Local 90 of the National Organization of Masters, Mates and Pilots, AFL, a voluntary unincorporated labor organization; that two of said men were William Caldwell and Viggo Hansen. On December 8, 1952, by decree of this court, members of said Local 90 of the National Organization of Masters, Mates and Pilots and all persons acting by, through, under or in concert with them, were enjoined from picketing or otherwise interfering with the use of said vessel. Thereafter, and on that day, said picket line was removed from the vessel. All of said picketing at, around or near the SS Riviera was conducted in a peaceful manner and without any violence.

XII.

Employees of stevedoring and ship repair firms and other shore employees or employers with whom the owners of the SS Riviera had contracted for work refused to so work while any of the said picket lines were present at or near the vessel. In the intervals when pickets were not present, from November 26 to November 28, 1952, such stevedoring,

ship repair and other shore employees did work on the vessel, and such employees returned to work immediately after the removal of the last of said picket lines, and thereafter completed the repairs, loading and other work ordered by the owners of the SS Riviera.

XIII.

Defendants would have continued to picket the SS Riviera after December 8, 1952, had they not been enjoined from so doing by this court.

XIV.

On or about October 2, 1952, the said striking former crew members of the SS Riviera filed a libel in admiralty, said suit bearing Civil No. 6652. Plaintiff herein filed a claim of owner and answered said libel. On or about October 9, 1952, plaintiff herein filed a libel in admiralty against the Sailors' Union of the Pacific, William Benz, individually and as port agent of the Sailors' Union of the Pacific, Robert Williams, individually and as patrolman of the Sailors' Union of the Pacific, said suit bearing Civil No. 6661 of this court. Said libels were consolidated for trial. Libelants in said Civil No. 6652 and Respondents in Civil No. 6661 both appeared by the same counsel, Messrs. Tanner and Carney, at said trial. True copies of the libel, answer, findings of fact and conclusions of law, and decree in Civil No. 6652 are Exhibits Nos. ...., ..., ... and .... True copies of the libel, answer, findings of fact and conclusions of law, and decree in Civil No. 6661 are Exhibits Nos. ...., ..., ... and .... A true copy of the opinion of the Court delivered in said causes October 22, 1952, is Exhibit No. ....

XV.

Many members of Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, are employed aboard American flag vessels carrying grain between ports, including the Port of Portland, in the United States and ports in India, and said members and the union have an economic interest in the wages, hours and conditions of employment in said trade.

XVI.

On December 11, 1952, plaintiff paid the decree of $2,779.60 entered by this court in Civil No. 6652 on that date.

XVII.

During the period November 28 through December 8, 1952, plaintiff necessarily incurred expenses for the operation and maintenance of said vessel in its idle condition in the following amounts, each figure being per day:

Agency fees	$ 15.00
Maintenance of crew members detained by Immigration	7.50
Guard at ship, midnight to 8.00 a.m.	16.04
Wharfage—Port of Portland	22.00
Wharfage—Albina Engine	47.00
Insurance Premiums	57.23
Wages, Master and crew	40.00
Subsistence, Master and crew	40.00
Miscellaneous overhead	5.23
Total	$250.00

XVIII.

Neither a contract nor collective bargaining agreement ever existed between the plaintiff and Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL.

XIX.

At all times herein mentioned while said vessel was picketed by said Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, there were no positions open aboard said vessel for licensed officers.

Plaintiff's Contentions of Fact

I.

Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, has rules and regulations by virtue of which its members act as an organized body represented in the Port of Portland, Oregon, by its business agent M. D. MacRae; that defendants M. D. MacRae, William Caldwell and Viggo Hansen are representatives of a class composed of all the members of said Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL.

II.

The members of the crew of the SS Riviera who went on strike on and after September 9, 1952, did so for the purpose of forcing plaintiff to enter into new articles with them for a shorter duration and at

wage rates and other conditions more favorable to them than those contained in the articles then in effect.

III.

At all times herein mentioned, plaintiff complied with all the terms and conditions of the said articles opened in March, 1952, and performed all of its obligations to members of the crew.

IV.

The defendants are parties in privity with the libelants in that certain suit bearing Civil No. 6652 and described more fully in Paragraph XIV of the Agreed Facts.

V.

The sole purpose of said picketing by the members of Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, was to compel the plaintiff to re-employ the said discharged, striking members of the crew of the said SS Riviera for a period shorter than that stated in the articles, and at wage rates and other conditions more favorable to them than those stated in said articles.

VI.

There is no labor dispute between plaintiff and defendants or Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, and any members or former members of the crew of the SS Riviera.

VII.

Plaintiff was unable to use its vessel for the period from November 28 through December 8, 1952, and

the sole proximate cause of such loss of use was the said picketing by defendants.

VIII.

That the licensed officers employed by the plaintiff aboard the SS Riviera were all citizens of countries other than the United States of America and that all of said officers belong to British Maritime Unions, and said officers were not eligible for membership in the National Organization of Masters, Mates and Pilots of America, AFL.

IX.

As a result of said picketing and acts of defendants, plaintiff suffered immeasurable and irreparable damage to its reputation for honesty and fair dealing, and its ability to obtain charters for the SS Riviera has been impaired; and plaintiff was further damaged and lost earnings at the rate of $800.00 per day during the period November 28 through December 8, 1952; and plaintiff was further damaged and incurred expenses at the rate of $250.00 per day for the maintenance of said vessel and its crew during said period, all to its total measurable damage in the amount of $10,500.00. In addition thereto, defendants threatened to and would have continued their said acts after December 8, 1952, to plaintiff's continuing damage, and in order to mitigate its said daily recurring damages, plaintiff was forced to employ legal counsel and to incur court costs and other expenses to obtain an injunction against further picketing, and thereby suffered special damages in the amount of $2500.00.

X.

On December 11, 1952, plaintiff payed the decree of $2,779.60 entered by this court in Civil No. 6652 on that date. At all times prior thereto after the filing of the libel in Civil No. 6652 plaintiff was ready, willing and able to furnish a bond in the amount of $25,000 as fixed by this court for release of the SS. Riviera, but interest on such bond would have amounted to over $4.00 per day and would have been a needless expense while a picket line was maintained at said vessel and only have added to the detention damages sustained by plaintiff. To mitigate such damages such a bond was not posted.

XI.

At all times herein mentioned the SS Riviera was engaged in the trade of a tramp freighter and did not regularly carry any particular type or types of freight or call at any particular port or ports. It has not called at a port in the United States since leaving Portland in December, 1952.

Defendants' Contentions of Fact

I.

Defendant M. D. MacRae is a member of Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, a voluntary association, and that said defendant is the business agent for said union for the Port of Portland, Oregon, and is a resident of the State of Oregon, and said Local 90 includes all of the Ports of the West Coast of

the United States; that the executive offices and officers of Local 90 are located in San Francisco, California; that said defendant is not a representative of all of the members of said Local 90, but merely performs certain limited duties in the Port of Portland, Oregon.

II.

Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, is a voluntary association of licensed marine officers who have been, and now are, employed in various capacities on seagoing vessels engaged in foreign and domestic commerce; that said members have been, and now are, employed as officers on vessels carrying cargoes of grain from ports of the United States to ports of India and the Far East; that said union has collective bargaining agreements with many employers in said trade setting the wages and working conditions for the members of said union engaged in that trade.

III.

Plaintiff is now and for some time prior hereto has been, and will continue to operate the SS Riviera in the grain charter trade between the ports of the United States and the ports of India, and other places in the Far East, in the carriage of cargoes of grain; that all of said cargoes, and particularly the one attempted to be loaded by the SS Riviera, are paid for by the the United States Government under the Aid to India Act; that by reason of the manner and method under which the

plaintiff has operated its vessel, and is continuing to operate it, the plaintiff is undermining and destroying, and will undermine and destroy, the standards set up and maintained by Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, on vessels engaged in said trade; that the plaintiff has by operating its vessels as aforesaid, purposely sought to avoid the Maritime laws of the United States, the International Conventions for Safety at Sea, and the terms and conditions of employment maintained by the employers of members of said Local 90, and thereby the plaintiff has been able, and is now able, to under-bid said employers for charters in said trade and commerce, and members of said Local 90 have been and are now being deprived of employment in said trade; that the plaintiff has refused to employ members of Local 90 in the operation of its vessels, and has refused to operate its vessels under the conditions and terms of employment under which members of Local 90 are employed on other vessels in said trade and commerce.

IV.

The picketing of the SS Riviera by said Local 90 was for the purpose of giving publicity to the unfairness of the plaintiff in the operation of its vessel, and to give publicity to the conditions existing in the same trade in which its members are engaged and have an economic interest; that said picketing is peaceful, and no violence whatsoever has occurred at or in the vicinity of the wharf

where the SS Riviera was berthed, or at any other place.

V.

From September 18, 1952, to September 25, 1952, the SS Riviera was in the custody of the U. S. Marshal pursuant to the possessory libel filed by plaintiff, Civil No. 6629 of this court.

VI.

From October 2, 1952, the SS Riviera was in the custody of the U.S. Marshal and unclaimed and unreleased by bond pursuant to the libel filed for wages by the crewman, Civil No. 6652, and was not released until the decree in said suit was paid on December 11, 1952.

VII.

The idleness of the SS Riviera in the Port of Portland, Oregon, was not proximately caused by any acts or conduct on the part of the defendants M. D. MacRae, William Caldwell or Viggo Hansen, or on the part of Local 90 of the National Association of Masters, Mates and Pilots of America, AFL.

VIII.

The plaintiff was not damaged as the proximate result of the picketing of the SS Riviera.

IX.

The defendants herein are not parties in privity with the libelants in the wage libel, Civil No. 6652, of this court.

Defendants' Contentions of Law

I.

This court has no jurisdiction in this suit over the Masters, Mates and Pilots of America, AFL, or its members, but only jurisdiction over M. D. MacRae, William Caldwell and Viggo Hansen in their individual capacities.

II.

The facts herein do not constitute the proper subject matter for a class or representative suit.

III.

The damages, if any, sustained by the plaintiff are damnum absque injuria because of the existence of a labor dispute in at least one of the following particulars:

(a) That a labor dispute existed between the plaintiff and the former members of the crew of the SS Riviera concerning the terms and conditions of their employment aboard said vessel.

(b) That a labor dispute existed between the plaintiff and the Sailors' Union of the Pacific in its capacity as collective bargaining representative for former members of the crew of the SS Riviera concerning the terms and conditions of employment aboard said vessel and the representation of the employees of the plaintiff.

(c) That a labor dispute existed between the plaintiff and Local 90 of the National Association of Masters, Mates and Pilots of America, AFL, con-

cerning the working conditions employed by the plaintiff aboard said vessel in the trade and commerce in which said union is engaged.

(d) That a labor dispute existed between Local 90 of the National Association of Masters, Mates and Pilots of America, AFL, and the crew members of the SS Riviera who did not go on strike.

IV.

This court is deprived of jurisdiction by reason of the Norris-LaGuardia Act because of the existence of said labor disputes.

V.

The picketing by the defendants was a lawful exercise of their right of free speech.

VI.

The damages sustained by the plaintiff as the proximate result of the conduct of the defendants is too indefinite and uncertain to be allowed.

VII.

The refusal to cross the picket line by employees of firms who contracted with the plaintiff for the loading and repairing of the SS Riviera was an independent, intervening cause of plaintiff's damages, if any, due to the idleness of the vessel.

VIII.

From October 2, 1952, until December 11, 1952, when said vessel was in the custody of the United States Marshal, pursuant to a libel, the plaintiff

sustained no damages on account of the idleness of the vessel.

IX.

The Findings of Fact and Conclusions of Law entered in the wage libel, Civil No. 6652 of this court, are not res adjudicata in this proceedings and the defendants herein are not bound thereby.

X.

All of plaintiff's contentions are denied.

Issues Relating to Jurisdiction of the Parties

I.

Do the members of Local 90 of the National Association of Masters, Mates and Pilots of America, AFL, have sufficiently identical interests in the subject matter of this suit to constitute a class subject to suit by service upon representatives?

II.

Are defendants M. D. MacRae, William Caldwell and Viggo Hansen by virtue of their positions as members and officers of Local 90 of the National Association of Masters, Mates and Pilots of America, AFL, and their interests as defendants herein, appropriate and capable persons to represent the interests of all of the members of said union herein?

III.

Is a class suit a proper device to recover damages for picketing from an unincorporated labor organization?

Issues on the Merits

IV.

Did a labor dispute exist between the plaintiff and the former members of the crew of the SS Riviera concerning the terms and conditions of employment aboard the vessel?

(a) Did the members of the crew of the SS Riviera who went on strike do so for the purpose of forcing plaintiff to enter into a new articles with them at wage rates and other conditions more favorable to them than the articles they had signed?

(b) Did the members of the crew of the SS Riviera go on strike on account of the conditions existing on the vessel which they believed made it unseaworthy?

(c) Did plaintiff comply with all of the terms and conditions of said articles and perform all of its obligations to members of the crew of the SS Riviera?

V.

Did a labor dispute exist between the plaintiff and the Sailors' Union of the Pacific in its capacity as collective bargaining agent for the former members of the crew of the SS Riviera concerning the terms and conditions of employment aboard the vessel and the representation of said crew members?

VI.

Did a labor dispute exist between the plaintiff and Local 90 of the National Association of Masters,

Mates and Pilots of America, AFL, concerning the economic interest of said union and the working conditions existing aboard the SS Riviera?

VII.

Did a labor dispute exist between the said Local 90 of the National Association of Masters, Mates and Pilots of America, AFL, and the members of the crew employed by the plaintiff on the SS Riviera which crew members did not go on strike?

VIII.

Did the said Local 90 of the National Association of Masters, Mates and Pilots of America, AFL, picket the SS Riviera from November 28, 1952, to December 8, 1952, for the sole purpose of compelling the plaintiff to re-employ the striking members of the crew at wages and other conditions more favorable to them than contained in the articles they had signed, or was said picketing for that purpose and/or in furtherance of the labor dispute mentioned in paragraphs VI and VII above?

IX.

Does the existence of a labor dispute, if any, render damages, if any, sustained by the plaintiff, damnum absque injuria?

(a) Does the Norris-LaGuardia Act merely limit the court's jurisdiction for the issuance of injunctions in labor disputes, or does the Act define the substantive rights of parties in labor disputes?

X.

Was the picketing by the defendants a lawful exercise of their right of free speech so that the damages, if any, sustained by the plaintiff are damnum absque injuria?

XI.

Were the damages sustained by the plaintiff, if any, a proximate result of the picketing of the vessel by the defendants?

(a) Was the refusal of the employees of contractors with whom plaintiff had contracted for repair and loading of the vessel to cross the picket line an independent intervening cause of plaintiff's damages, if any?

(b) Were the damages, if any, sustained by the plaintiff as a proximate result of the picketing by the defendants too indefinite and uncertain to be allowed?

(c) Was plaintiff deprived of the use of the vessel by virtue of its being in the custody of the U. S. Marshal pursuant to a libel in this court, Civil No. 6652, from October 2, 1952, until December 11, 1952?

(d) Was the vessel in the custody of the Marshal from October 2 to December 11, 1952, pursuant to said libel?

XII.

What is the amount of the damage sustained by plaintiff as a proximate result of the acts of defendants, if any?

XIII.

Should any judgment and decree in favor of plaintiff be entered against the defendants M. D. MacRae, William Caldwell and Viggo Hansen and any funds or property held by Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, or for the general use and benefit of members of said Local 90 or any of them; or should it run only against defendants M. D. MacRae, William Caldwell and Viggo Hansen, or either of them?

Issues of Evidence

XIV.

Are defendants herein bound by the findings of fact and conclusions of law entered in Civil No. 6652 and estopped from relitigating questions there decided?

(a) Are defendants herein parties in privity with libelant in Civil No. 6652?

It Is Hereby Ordered that the foregoing constitutes the pre-trial order in the above-entitled cause; that it supersedes the pleadings which are hereby amended to conform hereto. Said pre-trial order shall not be amended during the trial except by consent or by order of the court to prevent manifest injustice.

Dated this 22nd day of March, 1954.

/s/ GUS J. SOLOMON,
District Judge.

The foregoing form of pre-trial order is hereby approved.

/s/ JOHN D. MOSSER,
Of Attorneys for Plaintiff.

/s/ RICHARD R. CARNEY,
Of Attorneys for Defendants.

[Endorsed]: Filed March 22, 1954.

[Title of District Court and Cause.]

Civil 6735

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for trial before the undersigned Judge of the above-entitled court, plaintiff being represented by Wood, Matthiessen, Wood & Tatum and Gunther F. Krause, defendants being represented by K. C. Tanner and Richard R. Carney. Counsel for the parties prepared a pre-trial order and entered into a stipulation for the trial of this cause with Civil Nos. 6699 and 6745 and for the reception herein of transcripts of testimony and exhibits previously taken in these and certain previous cases heard by the Court. The Court entered said pre-trial order and approved said stipulation, heard the testimony and considered the evidence submitted by the parties and considered the briefs submitted by counsel. Now being fully advised, the Court makes the following

Findings of Fact

I.

At all times herein mentioned plaintiff was a corporation duly organized and existing under any by virtue of the laws of the Republic of Panama.

II.

At all times herein mentioned defendants M. D. MacRae, William Caldwell and Viggo Hansen were and now are members of Local 90 of the National Organization of Masters, Mates & Pilots of America, AFL, a voluntary, unincorporated association having a Secretray-Treasurer, and business agents. At all times herein mentioned the Secretary-Treasurer of said union, its principal executive officer, was and is now a resident of the State of California, and at all times herein mentioned the defendant M. D. MacRae was and now is the business agent of said union in the Port of Portland, Oregon, and is a citizen and inhabitant of the State of Oregon. Plaintiff is a citizen and inhabitant of a state or country different from that of each of said defendants.

III.

At all times herein mentioned Local 90 of the National Organization of Masters, Mates & Pilots of America, AFL, had and now has a membership upwards of 1,000 men, many of whom are employed on ocean-going vessels so that it would be impracticable and impossible to join all of said members as defendants in this suit.

At all times herein mentioned, the National

Organization of Masters, Mates & Pilots of America, AFL; operated under rules and regulations by virtue of which its members acted as an organized body, and its members had sufficiently identical interests in the subject matter of this suit to constitute a class subject to suit by serivce on representatives. Defendants MacRae, Caldwell and Hansen, by virtue of their position as members, and in the case of MacRae as an officer, of such union and their interest as defendants herein, are appropriate and capable persons to represent the interests herein of all of the members of said Local 90 and were sued herein as such representatives, as well as individually.

IV.

In March, 1952, plaintiff became the owner of the SS Riviera and at all times herein mentioned said vessel was registered at the Port of Monrovia, and sailing under the flag of the Republic of Liberia.

V.

Between March, 1952, and August, 1952, the crew members of the steamship Riviera, principally German and British and all citizens of countries other than the United States, signed a British form of articles whereby said crew members agreed to work on said ship on a voyage from Bremen, Germany, for a period of two years and futher agreed that British Maritime Board conditions were to apply to wages and hours of employment, and agreed that shore leave and cash advances were to be at the discretion of the master of the ship. By the terms of said Articles of Agreement, said crew members

and plaintiff herein agreed upon the wages to be paid to the crew members and the provisions to be furnished to crew members, and the scale of wages and provisions as agreed upon were set forth in said agreement. The wage rates specified therein for each crew member were equal to or higher than those customarily then paid for similar employment in the British Merchant Marine. Said crew members further agreed by the terms of said articles to be obedient to the lawful commands of said master in everything relating to said ship and the stores and cargo thereof, whether on board, in boats, or on shore.

VI.

After leaving Bremen, said SS Riviera proceeded to New Orleans, Louisiana, where a cargo of grain was loaded. Said cargo was carried to and discharged at a port or ports in India where a cargo of coal was loaded. Said cargo of coal was carried to and unloaded to a port or ports in Japan. The SS Riviera then sailed in ballast to the Port of Portland, Oregon, where it arrived on September 3, 1952, and docked at Swan Island Dry Dock.

VII.

The purposes for which the vessel came to the Port of Portland, Oregon, were to complete an insurance survey, carry out repairs indicated as needed by said survey and voyage repairs, and to load a cargo of wheat for the carriage of which to India the said vessel had been chartered by its owners.

VIII.

Plaintiff complied with all of its obligations under the terms of the ship's articles and the contract governing the relations between the plaintiff and members of the crew of said vessel.

IX.

On or about the 9th day of September, 1952, a number of members of the crew of the Riviera refused to obey the lawful orders of the master of said vessel and went on strike for the sole purpose of cutting down the term of their service from two years, the length of service agreed upon in their Articles, and to obtain a higher wage rate and other conditions more favorable to them than those agreed upon in said Articles.

X.

From the date of said strike up to and including September 26, 1952, the said striking crewmen of said vessel remained aboard the vessel, continued to occupy their quarters, refused to continue to work aboard said vessel and refused to leave the vessel. On or about September 18, 1952, plaintiff filed in this court a possessory libel, bearing Civil No. 6629. On September 25, 1952, said striking crewmen were ordered by order of this court in said possessory libel to leave said vessel and said crewmen, on September 26, 1952, left said vessel.

XI.

From September 9, 1952, until September 26, 1952, said striking members of the crew picketed the ves-

sel. Said striking crew members or others acting for them picketed said vessel from September 26 through October 13, 1952, when they withdrew their picket line. On or about September 15, 1952, said striking members of the crew of the SS Riviera designated the Sailors' Union of the Pacific as their collective bargaining representative. Immediately after the withdrawal of said picket line and on October 14, 1952, members of the Sailors' Union of the Pacific, a voluntary unincorporated labor organization, acting pursuant to said designations and a resolution duly adopted by said union, commenced picketing said vessel and continued to picket it until they and all persons acting by, through, under or in concert with them, were restrained and enjoined from further picketing by this court on November 26, 1952. Thereafter, and on that day, the picket line was removed from the said vessel. On November 28, 1952, a picket line was established at the vessel by three men wearing armbands and purporting to act for Local 90 of the National Organization of Masters, Mates and Pilots, AFL. Two of said men were William Caldwell and Viggo Hansen, and they were in fact acting for said Local 90 under instructions from defendant MacRae. On December 8, 1952, by decree of this court, members of said Local 90 of the National Organization of Masters, Mates and Pilots and all persons acting by, through, under or in concert with them, were enjoined from picketing or otherwise interfering with the use of said vessel. Thereafter, and on that day, said picket line was removed from the vessel. Said picketing would have been continued had it not been

so enjoined. All of said picketing at, around or near the SS Riviera was conducted in a peaceful manner and without any violence.

XII.

Said picketing by members of Local 90 of the National Organization of Masters, Mates and Pilots, AFL, was intended to prevent the repairing and loading of the SS Riviera; and the sole purpose of said picketing by the members of Local 90 of the National Organization of Masters, Mates and Pilots, AFL, was to compel the plaintiff to re-employ the said discharged, striking members of the crew of the said SS Riviera for a shorter period than that stated in the articles, and at wage rates and other conditions more favorable to them than those stated in said articles, and to help the Sailors' Union of the Pacific in obtaining that objective after it had been restrained from picketing for that purpose. It was not the purpose of the picketing to require the plaintiff to replace its licensed officers with members of Local 90. All of the vessel's officers were British subjects and were under Articles with the vessel. None of them were members of Local 90. They were not offered membership in Local 90; nor were any of them eligible for membership in Local 90.

XIII.

Employees of stevedoring and ship repair firms and other shore employees of employers with whom the owners of the SS Riviera had contracted for work refused to so work while any of the said picket lines were present at or near the vessel. In the inter-

val when pickets were not present, from November 26 to November 28, 1952, such stevedoring, ship repair and other shore employees did work on the vessel, and such employees returned to work immediately after the removal of the last of said picket lines. Plaintiff was unable to use its vessel for the period from November 28, 1952, through December 8, 1952, and the sole proximate cause of such loss was the said picketing by defendants. Plaintiff was not deprived of the use of the SS Riviera by any technical custody of the United States Marshal during said period.

XIV.

There is no labor dispute between plaintiff and any of the defendants or Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, or between plaintiff and any of said members or former members of the crew of the SS Riviera, or between Local 90 and members of the crew of the SS Riviera who did not go on strike, or between plaintiff and the Sailors' Union of the Pacific.

XV.

Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, is a voluntary association of licensed marine officers who have been, and now are, employed in various capacities on sea-going vessels engaged in foreign and domestic commerce; that said members have been, and now are, employed as officers on vessels carrying cargoes of grain from ports of the United States to ports of India and the Far East; that said union has collective

bargaining agreements with many employers in said trade, setting the wages and working conditions for the members of said union engaged in that trade.

XVI.

Many members of Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL, are employed aboard American flag vessels carrying grain between ports, including the Port of Portland, in the United States and ports in India, and said members and the union have an economic interest in the wages, hours, and conditions of employment in said trade.

XVII.

The average wage, exclusive of found, paid by the plaintiff aboard the SS Riviera for the services of a foreign licensed officer was approximately $150.00 per month, which sum amounted to only about one-fourth the amount of cash wages paid to United States licensed officers represented by Local 90 while employed aboard United States flag vessels engaged in the trade of carrying cargoes of grain under charter from ports of the United States to ports of the Orient.

XVIII.

All of the agreed facts set forth in the pretrial order are true.

XIX.

As a proximate result of defendants' said picketing, plaintiff has suffered immeasurable and irreparable damage to its reputation for honesty and fair dealing and its ability to obtain charters for the SS Riviera has been impaired. As a further proxi-

mate result of defendants' said picketing, plaintiff has suffered definite and measurable damage, through loss of earnings and the expense of maintaining the SS Riviera and the loyal members of its crew during the period November 28, 1952, through December 8, 1952, in the total amount of $9,000.00. The port expenses of the vessel were at the rate of $250.00 per day and the loss of net earnings $650.00 per day for the 10-day period.

Whereupon the Court makes the following:

Conclusions of Law

I.

The Court has jurisdiction of the subject matter. Plaintiff has no administrative remedy under the National Labor Relations Act as amended by the Labor Management Relations Act of 1947, and the Court is not deprived of jurisdiction by the existence of any such remedy.

II.

The Court has jurisdiction of the parties. This is a true class suit and defendants MacRae, Caldwell and Hansen are appropriate representatives of all of the members of Local 90, National Organization of Masters, Mates and Pilots, AFL.

III.

Defendants' picketing was for an unlawful purpose. There is no labor dispute between plaintiff and any of the defendants or Local 90 of the National Organization of Masters, Mates and Pilots of

America, AFL, or between plaintiff and any of said members or former members of the crew of the SS Riviera, or between Local 90 and members of the crew of the SS Riviera, or between plaintiff and the Sailors' Union of the Pacific. Nor was there any labor dispute within the definition of any Federal Statute. Defendants' picketing was not a lawful exercise of their right of free speech.

IV.

Even though the defendants picketed the Riviera for the purpose of requiring the plaintiff to replace its licensed personnel with members of Local 90, such picketing would not create a labor dispute and such picketing would be illegal under the laws of the State of Oregon and the laws of the United States.

V.

Defendants' said picketing was the sole proximate cause of plaintiff's said damages. The failure of employees of independent contractors to cross defendants' picket line was not an independent intervening cause of plaintiff's damage.

VI.

Plaintiff is entitled to have judgment and decree entered in its favor, for the sum of $9,000.00, together with its costs and disbursements, against M. D. MacRae, William Caldwell and Viggo Hansen, each member of Local 90, National Organization of Masters, Mates and Pilots, AFL, and Local 90, National Organization of Masters, Mates and Pilots,

AFL, an unincorporated association of seafaring men with its present headquarters in San Francisco, California, and each and all of them; and to have execution issue thereon against the individual property of M. D. MacRae, William Caldwell and Viggo Hansen and against any property held by Local 90, National Organization of Masters, Mates and Pilots, AFL, or for the use and benefit of the members of Local 90, National Organization of Masters, Mates and Pilots, AFL, whether held in the name of the association or by others for the association; but not to have execution thereon against the individual property of any members of Local 90, National Organization of Masters, Mates and Pilots, AFL, not individually made a party herein, judgment against such members being entered solely for the purpose of establishing res judicata as to issues litigated herein.

Dated this 28th day of October, 1954.

/s/ GUS J. SOLOMON,
District Judge.

Lodged August 17, 1954.

[Endorsed]: Filed October 28, 1954.

In the District Court of the United States
for the District of Oregon
Civil 6735

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

M. D. MacRAE, WILLIAM CALDWELL and VIGGO HANSEN, Individually and as Representatives of All of the Members of Local 90 of the National Organization of Masters, Mates and Pilots, AFL,

Defendants.

FINAL DECREE

This cause came on for trial before the undersigned Judge of the above-entitled court, plaintiff appearing by its attorneys, Wood, Matthiessen, Wood and Tatum, John D. Mosser and Gunther F. Krause, and defendants appearing by their attorneys, K. C. Tanner and Richard R. Carney. Counsel for the parties prepared a pretrial order and entered into a stipulation for the trial of this cause with Civils Nos. 6699 and 6745, and for the reception herein of transcripts of testimony and exhibits previously taken in these and certain previous cases heard by the Court. The Court entered said pretrial order, approved said stipulation, considered such testimony and exhibits and the other evidence offered by the parties, and considered the briefs submitted by counsel. The Court now being fully advised and having made and filed its findings of fact and conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $9,000.00, together with its costs and disbursements of and from M. D. MacRae, William Caldwell and Viggo Hansen, each member of Local 90, National Organization of Masters, Mates and Pilots, AFL, and Local 90, National Organization of Masters, Mates and Pilots, AFL, an unincorporated association of seafaring men with its present headquarters in San Francisco, California, and each and all of them; and

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of M. D. MacRae, William Caldwell and Viggo Hansen and against any property held by Local 90, National Organization of Masters, Mates and Pilots, AFL, or for the use and benefit of the members of Local 90, National Organization of Masters, Mates and Pilots, AFL, whether held in the name of the association or by others for the association; but execution shall not issue hereon against the individual property of any member of Local 90, National Organization of Masters, Mates and Pilots, AFL, other than those heretofore individually named and made parties herein.

Dated this 28th day of October, 1954.

/s/ GUS J. SOLOMON,
District Judge.

Lodged August 17, 1954.

[Endorsed]: Filed October 28, 1954.

In the United States District Court
for the District of Oregon

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

M. D. MacRAE, JOHN DOE, RICHARD ROE, JOHN ROE and JAMES DOE, Individually and as the Representatives of All of the Members of Local 90 of the National Organization of Masters, Mates and Pilots of America, AFL,

Defendants.

NOTICE OF APPEAL

To the Plaintiff Above Named, and to Wood, Matthiessen, Wood & Tatum and John D. Mosser and Gunther F. Krause, its attorneys:

You, and each of you, will please take notice that the defendants above named do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Final Decree entered in the above-entitled suit on the 28th day of October, 1954, by the United States District Court for the District of Oregon, and said defendants appeal from said Final Decree and from each and every part thereof.

/s/ RICHARD R. CARNEY,

/s/ TANNER & CARNEY,

Attorneys for Defendants.

Service of copy acknowledged.

[Endorsed]: Filed November 26, 1954.

[Title of District Court and Cause.]

Civ. No. 6735

BOND

Know All Men by These Presents: That we, M. D. MacRae as principal, and Mabel Doane as surety, are each held and firmly bound unto Compania Naviera Hidalgo, S.A., in the sum of Two Hundred Fifty ($250.00) Dollars, lawful money of the United States of America, to be paid to the said Compania Naviera Hidalgo, S.A., for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Now, the Condition of this obligation is such that if the above bounden M. D. MacRae, as principal, and Mabel Doane as surety shall well and truly pay or cause to be paid unto the above-named Compania Naviera Hidalgo, S.A., the costs adjudged herein if the appeal is dismissed or the judgment affirmed, or such costs as the appellate court may award if the decree is modified, then this obligation shall be void; otherwise to remain in full force and effect.

Witness our hands and seals this 26th day of November, 1954.

/s/ M. D. MacRAE,
Principal.

/s/ MABEL DOANE,
Surety.

State of Oregon,
County of Multnomah—ss.

I, Mabel Doane, being first duly sworn, on oath depose and say: That I am a resident of said county and state, and a freeholder therein, and am worth the sum of $500.00 over and above all my just debts and legal liabilities, and exclusive of property exempt from execution, so help me God.

/s/ MABEL DOANE.

Subscribed and sworn to before me this 26th day of November, 1954.

[Seal] /s/ RICHARD R. CARNEY,
Notary Public for Oregon.

My Commission Expires March 22, 1958.

Service of copy acknowledged.

[Endorsed]: Filed November 26, 1954.

[Title of District Court and Cause.]

Civ. No. 6735

ORDER EXTENDING TIME IN WHICH TO FILE RECORD ON APPEAL

This matter coming on for hearing upon the application of the defendants for an order extending the time in which to file the record on appeal and docket the cause in the appellate court, and it duly and satisfactorily appearing to the court that the notice

of appeal was filed herein on November 26, 1954, and that the time for filing the record on appeal has not yet expired, and that the testimony has not yet been transcribed by the reporter and may not be transcribed by the reporter in time for transmission to the Court of Appeals within 40 days from said date, and it further appearing that the parties are in the process of preparing a transcript of the testimony in narrative form, and that additional time is needed to complete the preparation of said testimony, and the court being fully advised,

It Is Hereby Ordered that the time within which to file and docket the record on appeal in the above-entitled cause in the Court of Appeals be and the same hereby is extended to February 23, 1955.

Dated in open court December 28th, 1954.

/s/ GUS J. SOLOMON,
Judge.

It Is Hereby Stipulated and Agreed by and between the parties hereto through their respective counsel that an order may be entered herein extending the time to file the record on appeal and docket the cause in the appellate court to and including February 23, 1955.

/s/ JOHN D. MOSSER,
Of Attorneys for Plaintiff.

/s/ RICHARD R. CARNEY,
Of Attorneys for Defendants.

[Endorsed]: Filed December 28, 1954.

[Title of District Court and Cause.]

United States of America,
District of Oregon—ss.

CLERK'S CERTIFICATE

I, F. L. Buck, Acting Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Pre-trial order; Findings of fact and conclusions of law; Order to file proposed findings and objections to findings; Defendants' objections to plaintiff's proposed findings of fact and conclusions of law; Defendants' proposed findings of fact and conclusions of law; Final Decree; Notice of appeal; Bond on appeal; Order extending time in which to file record on appeal; Designation of contents of record on appeal; Statement of points upon which defendants intend to rely on appeal; and Transcript of docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 6735, in which Compania Naviera Hidalgo, S.A., is plaintiff and appellee, and M. D. MacRae, individually and as representative of all members of Local 90 of the National Organization of Masters, Mates and Pilots of America, A. F. of L., is defendant and appellant; that the said record has been prepared by me in accordance with the designation of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith copy of the court's oral opinion, and

I further certify that the cost of filing the notice of appeal, $5.00, has been paid by appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District this 18th day of February, 1955.

[Seal] /s/ F. L. BUCK,
Acting Clerk.

No. 14665

United States
Court of Appeals
for the Ninth Circuit.

JEFF MORRISON et al., Individually and as the Representatives of All of the Members of the Altantic and Gulf Coast District, Seafarers International Union, A. F. of L.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S. A.,

Appellee.

Transcript of Record

Appeal from the United States District Court for the District of Oregon

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—4-22-55

[Title of District Court and Cause.]

Civil No. 6745

PRE-TRIAL ORDER

This matter came on for pre-trial herein before the undersigned Judge of the above entitled Court on March 16, 1954, plaintiff appearing through John D. Mosser and Gunther F. Krause, of its attorneys, and defendants, Jeff Morrison and John Johnson, individually appearing through their attorneys, K. C. Tanner and Richard R. Carney, upon consideration of the matters appearing in the pleadings herein.

Nature of Proceedings

This is a suit by the plaintiff to recover damages on account of the picketing of its vessel by the defendants. A preliminary injunction was issued out of this court and an appeal was taken by defendants to the United States Court of Appeals for the Ninth Circuit. That appeal was dismissed on the ground that the injunction was moot because the plaintiff's vessel had departed. The Court of Appeals stated that plaintiff's claim for damages "is which it has the right to prosecute one wholly apart from any claim for an injunction" and remanded for further proceedings with the following statement:

> "——that what was determined by the court below in issuing such injunctions is without

further force or effect, and cannot be relied upon as res adjudicata, as creating an estoppel, or as the law of the case, all to the end that the issues relating to the claim of damages may be tried by the parties as free from the effects of such injunctions, as if the same had not been issued."

The case is now before this Court on the question of damages.

Agreed Facts

The following are admitted by all the parties and no proof need be produced thereupon at the trial:

I.

At all times herein mentioned plaintiff was and is now a corporation duly organized and existing under and by virtue of the laws of the Republic of Panama.

II.

At all times herein mentioned, defendant Jeff Morrison was and is a member, and defendant John Johnson was and is a permit member of the Atlantic and Gulf District of the Seafarers International Union, A. F. of L., a voluntary unincorporated association. Defendant Morrison was the Northwest representative of said Atlantic and Gulf District and at the time of filing of this suit and of service on them, defendants Morrison and Johnson were each citizens and inhabitants of the States of Oregon or Wash-

ington, and of a state or country different from that of which plaintiff is a citizen.

III.

At all times herein mentioned the said Atlantic and Gulf District of the S. I. U., A. F. of L., had and has now a membership upwards of 5,000 men, many of whom are employed on ocean-going vessels, so that it would be impracticable and impossible to bring all of said members in this suit.

IV.

In March, 1952, plaintiff became the owner of the SS Riviera, an American-built Liberty ship, and at all times herein mentioned said vessel was registered at the Port of Monrovia, and sailing under the flag of the Republic of Liberia.

V.

Between March and August of 1952, articles were signed on the SS Riviera for a voyage from Bremen, Germany, for a period of two years or until the earlier return of the vessel to a port on the Continent of Europe. A true copy of said articles is Exhibit No. ..... Said articles are on a form generally employed in the British Merchant Marine. Said articles were signed by citizens of foreign countries. The wage rates specified therein for each crew member are equal to or higher than those customarily paid for similar employment in the British Merchant Marine.

VI.

After leaving Bremen, said SS Riviera proceeded to New Orleans, Louisiana, where a cargo of grain was loaded. Said cargo was carried to and discharged at a port or ports in India where a cargo of coal was loaded. Said cargo of coal was carried to and unloaded to a port or ports in Japan. The SS Riviera then sailed in ballast to the Port of Portland, Oregon, where it arrived on September 3, 1952, and docked at Swan Island Dry Dock.

VII.

The purposes for which the vessel came to the Port of Portland, Oregon, were to complete an insurance survey, carry out repairs indicated as needed by said survey and voyage repairs, and to load a cargo of wheat for the carriage of which to India the said vessel had been chartered by its owners. A true copy of said charter is Exhibit No. ..... Both the charter for the carriage of the cargo of grain from New Orleans and from Portland were contracted for under the Aid to India Act.

VIII.

On September 3, 1952, the SS Riviera arrived at the Port of Portland, Oregon, and was docked at the Port of Portland Dry Dock at Swan Island. That thereafter and on or about September 9, 1952, twenty-four of the crew members of said vessel ceased working on said vessel, went on strike and refused to carry out the orders of the master; that

on said date the members of the crew demanded their pay and their transportation to their ports of engagement, and on said date the plaintiff, through the master of said vessel, told the members of the crew to either continue work or they were discharged.

IX.

From September 9, 1952, until September 26, 1952, said striking members of the crew picketed the vessel. On or about September 15, 1952, said striking members of the crew of the SS Riviera designated the Sailors' Union of the Pacific as their collective bargaining representative. One of such written designations is Exhibit No. .....

X.

From the date of said strike up to and including September 26, 1952, the said striking crewmen of said vessel remained aboard the vessel, continued to occupy their quarters, refused to continue to work aboard said vessel and refused to leave the vessel. On or about September 18, 1952, plaintiff filed in this Court a possessory libel, bearing Civil No. 6629. On September 25, 1952, said striking crewmen were ordered by order of this court in said possessory libel to leave said vessel and said crewmen, on September 26, 1952, left said vessel.

XI.

Said striking crew members or others acting for them picketed said vessel from September 26,

through October 13, 1952, when they withdrew their picket line. Immediately after the withdrawal of said picket line and on October 14, 1952, members of the Sailors' Union of the Pacific, a voluntary unincorporated labor organization, acting pursuant to a resolution duly adopted by said Union, a true copy of which is Exhibit No. ...., commenced picketing said vessel and continued to picket it until restrained and enjoined from further picketing by this Court on November 26, 1952. Thereafter, and on that day, the picket line was removed from the said vessel. On November 28, 1952, a picket line was established at the vessel by three men wearing armbands and purporting to act for Local 90 of the National Organization of Masters, Mates and Pilots, A. F. of L., a voluntary unincorporated labor organization. On December 8, 1952, by decree of this court, members of said Local 90 of the National Organization of Masters, Mates and Pilots and all persons acting by, through, under or in concert with them, were enjoined from picketing or otherwise interfering with the use of said vessel. Thereafter, and on that day, said picket line was removed from the vessel. On December 10, 1952, a picket line was established at the vessel by defendants Morrison and Johnson, purporting to act for the Atlantic and Gulf District, S.I.U., A. F. of L. On December 12, 1952, by decree of this Court, members of the said Atlantic and Gulf District, S.I.U., A.F. of L.; and all those acting by, through, under or in concert with them, were enjoined from picketing or otherwise interfering with

the use of said vessel. All of said picketing at, around or near the SS Riviera was conducted in a peaceful manner and without any violence.

XII.

Employees of stevedoring and ship repair firms and other shore employees or employers with whom the owners of the SS Riviera had contracted for work refused to so work while any of the said picket lines were present at or near the vessel. In the intervals when pickets were not present, from November 26 to November 28, 1952, and from December 8 to December 10, 1952, such stevedoring, ship repair and other shore employees did work on the vessel, and such employees returned to work immediately after the removal of the last of said picket lines, and thereafter completed the repairs, loading and other work ordered by the owners of the SS Riviera.

XIII.

Defendants would have continued to picket the SS Riviera after December 12, 1952 had they not been enjoined from so doing by this Court.

XIV.

During the period December 10, through December 12, 1952, plaintiff necessarily incurred expenses for the operation and maintenance of said vessel in its idle condition, in the following amounts, each figure being per day:

Agency fees	$ 15.00
Maintenance of crew members detained by Immigration	7.50
Guard at ship, midnight to 8:00 A.M.	16.04
Wharfage—Port of Portland	22.00
Wharfage—Albina Engine	47.00
Insurance Premiums	57.23
Wages, Master and crew	40.00
Subsistence, Master and crew	40.00
Miscellaneous Overhead	5.23
	$250.00

XV.

On or about October 2, 1952, the said striking former crew members of the SS Riviera filed a libel in admiralty, said suit bearing Civil No. 6652. Plaintiff herein filed a claim of owner and answered said libel. On or about October 9, 1952, plaintiff herein filed a libel in admiralty against the Sailors' Union of the Pacific, William Benz, individually and as port agent of the Sailors' Union of the Pacific; Robert Williams, individually and as patrolman of the Sailors' Union of the Pacific, said suit bearing Civil No. 6661 of this Court. Said libels were consolidated for trial. Libelants in said Civil No. 6652 and Respondents in Civil No. 6661 both appeared by the same counsel, Messrs. Tanner and Carney, at said trial. True copies of the libel, answer, findings of fact and conclusions of law, and decree in Civil No. 6661 are Exhibits Nos. ...., ..., ..., and ..... A true copy of the opinion of the Court delivered in said causes October 22, 1952, is Exhibit No. .....

XVI.

Many members of the Sailors' Union of the Pacific are employed aboard American flag vessels carrying grain between ports, including the Port of Portland, in the United States and ports in India, and said members and the Union have an economic interest in the wages, hours and conditions of employment in said trade.

XVII.

On December 11, 1952, plaintiff paid the decree of $2,779.60 entered by this court in Civil No. 6652 on that date.

XVIII.

Neither a contract nor collective bargaining agreement ever existed between the plaintiff and Jeff Morrison or John Johnson or the Atlantic and Gulf District, Seafarers International Union, A. F. of L.

XIX.

That from September 9, 1952, upon the termination of employment of said crewmen of the SS Riviera, until December 10, 1952, there were approximately twenty-five jobs open for seamen on the SS Riviera.

Plaintiff's Contentions of Fact

I.

The Atlantic and Gulf District, S.I.U., A. F. of L., has rules and regulations by virtue of which its members act as an organized body as represented in the Port of Portland by its Northwest agent Defendants, Morrison and Johnson, are representa-

tives of class composed of all of the members of said Atlantic and Gulf District, S.I.U., A. F. of L.

II.

The members of the crew of the SS Riviera who went on strike on and after September 9, 1952, did so for the purpose of forcing plaintiff to enter into new articles with them for a shorter duration and at wage rates and other conditions more favorable to them than those contained in the articles then in effect.

III.

At all times herein mentioned, plaintiff complied with all the terms and conditions of the said articles opened in March, 1952, and performed all of its obligations to members of the crew.

IV.

The defendants are parties in privity with the libelants in that certain suit bearing Civil No. 6652 and described more fully in Paragraph XIV of the Agreed Facts.

V.

The sole purpose of said picketing by the members of the Atlantic and Gulf District, S.I.U., A. F. of L., was to compel the plaintiff to re-employ the said discharged, striking members of the crew of the said SS Riviera for a period shorter than that stated in the articles, and at wage rates and other conditions more favorable to them than those stated in said articles.

VI.

There is no labor dispute between plaintiff and defendants or the Atlantic and Gulf District, S.I.U., A. F. of L., or between plaintiff and any members or former members of the crew of the SS Riviera.

VII.

Plaintiff was unable to use its vessel for the period from December 10, through December 12, 1952, and the sole proximate cause of such loss of use was the said picketing by defendants.

VIII.

As a result of said picketing and acts of defendants, plaintiff suffered immeasurable and irreparable damage to its reputation for honesty and fair dealing, and its ability to obtain charters for the SS Riviera has been impaired; and plaintiff was further damaged and lost earnings at the rate of $800.00 per day during the period December 10 through December 12, 1952; and plaintiff was further damaged and incurred expenses at the rate of $250.00 per day for the maintenance of said vessel and its crew during said period, all to its total measurable damage in the amount of $3,150.00. In addition thereto, defendants threatened to and would have continued their said acts after December 12, 1952, to plaintiff's continuing damage, and in order to mitigate its said daily recurring damages, plaintiff was forced to employ legal counsel and to incur court costs and other expenses to obtain an injunction against

further picketing, and thereby suffered special damages in the amount of $2,500.00.

IX.

At all times after the filing of the libel in Civil No. 6652, plaintiff was ready, willing and able to furnish a bond in the amount of $25,000 as fixed by this Court for release of the SS Riviera, but interest and/or premium expense on such bond would have been a needless expense while a picket line was maintained at said vessel and only have added to the detention damages sustained by plaintiff. To mitigate such damages such a bond was not posted.

X.

At all times herein mentioned, the SS Riviera was engaged in the trade of a tramp freighter and did not regularly carry any particular type or types of freight or call at any particular port or ports. It has not called at a port in the United States since leaving Portland in December, 1952.

Defendants' Contentions of Fact

I.

That said defendants are members of the Atlantic and Gulf District of the Seafarers International Union, A. F. of L., a voluntary association, and that the defendant Jeff Morrison is the Northwest representative of said union and is a resident of the State of Washington; that the executive offices and officers of said union are located in New York City, New York, and that said defendants, or either of them,

are not representatives of all of the members of said union but merely perform certain limited duties for said union.

II.

That the S.I.U., Atlantic and Gulf District, A. F. of L., is a voluntary association of unlicensed seamen who have been, and are now, employed in various capacities on sea-going vessels engaged in foreign and domestic commerce; that said members have been and are now employed as seamen on vessels carrying cargoes of grain from ports in the United States and ports of India and the Far East; that said union has collective bargaining agreements with many employers in said trade setting the wages and working conditions for the members of said union engaged in said trade.

III.

That the plaintiff is now, and for some time prior hereto has been, and will continue to operate the SS Riviera in the grain charter trade between the ports of the United States and ports of India and other places in the Far East, in the carriage of cargoes of grain; that all of said cargoes, and particularly the one sought to be loaded by the SS Riviera, are paid for by the United States Government under the Aid to India Act; that by reason of the manner and method under which the plaintiff has operated its vessel, and is continuing to operate it, the plaintiff is undermining and destroying, and will undermine and destroy, the standards set up and maintained by Atlantic and Gulf District of the S.I.U., A. F. of L., on vessels engaged in said trade; that the plaintiff

has by operating its vessels as aforesaid, purposely sought to avoid the Maritime laws of the United States, the International Conventions for Safety at Sea, and the terms and conditions of employment maintained by the employers of members of said Atlantic and Gulf District of the S.I.U., A. F. of L.; that thereby the plaintiff has been able, and is now able, to under-bid said employers for charters in said trade and commerce and members of said Atlantic and Gulf District have been and are now being deprived of employment in said trade; that the plaintiff has refused to operate its vessels under the conditions and terms of employment under which members of said Atlantic and Gulf District are employed on other vessels in said trade and commerce.

IV.

That the picketing of the SS Riviera by the S.I.U., Atlantic and Gulf District, A. F. of L., was for the purpose of inducing the owner of said vessel to negotiate with said union for the employment of its members aboard said vessel, and was also for the purpose of giving publicity to the unfairness of the plaintiff in the operation of its vessel, and to give publicity to the conditions existing in the same trade in which its members are engaged and have an economic interest; that said picketing is peaceful, and no violence whatsoever has occurred at or in the vicinity of the wharf where the SS Riviera is berthed, or at any other place.

V.

That at all times herein mentioned while said vessel was picketed by said persons purporting to act for the Atlantic and Gulf District, S.I.U., that there were openings for unlicensed personnel aboard said vessel.

VI.

From September 8, 1952, to September 25, 1952, the SS Riviera was in the custody of the U. S. Marshal pursuant to the possessory libel filed by plaintiff, Civil No. 6629, of this Court.

VII.

From October 2, 1952, the SS Riviera was in the custody of the U. S. Marshal and unclaimed and unreleased by bond pursuant to the libel filed for wages by the crewmen, Civil No. 6652, and was not released until the decree in said suit was paid on December 11, 1952.

VIII.

The idleness of the SS Riviera in the Port of Portland, Oregon, was not proximately caused by any acts or conduct on the part of the defendants William Benz or Robert Williams, or on the part of the Sailors' Union of the Pacific.

IX.

The plaintiff was not damaged as the proximate result of the picketing of the SS Riviera.

X.

The defendants herein are not parties in privity

with the libelants in the wage libel, Civil No. 6652, of this Court.

XI.

The SS Riviera sailed from Portland, Oregon, on December 23, 1952, with a crew consisting mostly of British and Canadian seamen, none of whom was affiliated with the Atlantic and Gulf District, S.I.U. That on or about January 10, 1953, when the SS Riviera reached Honolulu, T. H., fifteen of said new crewmen quit the ship in protest against the ship's "scummy drinking water, lousy plumbing facilities, continual boiler trouble and general unsanitary working conditions."

That on or about January 15, 1953, nine of said fifteen crewmen returned to the ship but six were replaced before the vessel's departure.

When the vessel reached Bombay on March 7, 1953, five members of the crew quit the ship because of the inadequate food and sanitation aboard the ship.

Plaintiff's Contentions of Law

I.

The Court has jurisdiction of the parties and the subject matter.

II.

This is a true class suit and the members of the S.I.U., Atlantic and Gulf District, A. F. of L., constitute a class and are represented by defendants Morrison and Johnson.

III.

There is no labor dispute between plaintiff and any of the defendants or the S.I.U., Atlantic and Gulf District, A. F. of L., and there is no labor dispute between plaintiff and any of said members or former members of the crew of the SS Riviera.

IV.

The findings of fact and conclusions of law entered in Civil No. 6652 are res adjudicata in this proceeding and defendants are bound thereby and estopped from relitigating the same and more specifically are estopped from denying plaintiff's Contentions of Facts II and III.

V.

Plaintiff is entitled to a judgment and decree against defendants for its general damages of $3,150.00, and its special damages of $2,500.00, and for its costs and disbursements herein, and to have execution on said judgment and decree against:

(a) Any funds or property held by or for the general use and benefit of members of the S.I.U., Atlantic and Gulf District, A. F. of L.

(b) Defendants Jeff Morrison and John Johnson.

or any of them.

Defendants' Contentions of Law

I.

This Court has no jurisdiction in this suit over the S.I.U., Atlantic and Gulf District, A. F. of L., or

its members but only jurisdiction over Jeff Morrison and John Johnson in their individual capacities.

II.

The facts herein do not constitute the proper subject matter for a class or representative suit.

III.

The damages, if any, sustained by the plaintiff are damum absque injuria because of the existence of a labor dispute in at least one of the following particulars:

(a) That a labor dispute existed between the plaintiff and the former members of the crew of the SS Riviera concerning the terms and conditions of their employment aboard their vessel.

(b) That a labor dispute existed between the plaintiff and the Sailors' Union of the Pacific in its capacity as collective bargaining representative for former members of the crew of the SS Riviera concerning the terms and conditions of employment aboard said vessel and the representation of the employees of the plaintiff.

(c) That a labor dispute existed between the plaintiff and the S.I.U., Atlantic and Gulf District, A. F. of L., concerning the working conditions employed by the plaintiff aboard said vessel in the trade and commerce in which said union is engaged.

(d) That a labor dispute existed between the plaintiff and the S.I.U., Atlantic and Gulf District,

A. F. of L., concerning the employment of members of the S.I.U., Atlantic and Gulf District, A. F. of L., aboard the SS Riviera.

(e) That a labor dispute existed between the S.I.U., Atlantic and Gulf District, A. F. of L., and the members of the crew of the SS Riviera who did not go on strike.

IV.

This Court is deprived of jurisdiction by reason of the Norris-LaGuardia Act because of the existence of said labor disputes.

V.

The picketing by the defendants was a lawful exercise of their right of free speech.

VI.

The damages sustained by the plaintiff as the proximate result of the conduct of the defendants is too indefinite and uncertain to be allowed.

VII.

From October 2, 1952, until December 11, 1952, when said vessel was in the custody of the United States Marshal pursuant to a libel, the plaintiff sustained no damages on account of the idleness of the vessel.

VIII.

The refusal to cross the picket line by employees of firms who contracted with the plaintiff for the loading and repairing of the SS Riviera was an independent, intervening cause of plaintiff's damages, if any, due to the idleness of the vessel.

IX.

The Findings of Fact and Conclusions of Law entered in the wage libel, Civil No. 6652, of this Court, are not res adjudicata in this proceeding and the defendants herein are not bound thereby.

Issues Relating to Jurisdiction of the Parties

I.

Do the members of the S.I.U., Atlantic and Gulf District, A. F. of L., have sufficiently identical interests in the subject matter of this suit to constitute a class subject to suit by service upon representatives?

II.

Are defendants Morrison and Johnson, by virtue of their positions as members and officers of the S.I.U., Atlantic and Gulf District, A. F. of L., and their interests as defendants herein, appropriate and capable persons to represent the interests of all of the members of the said union herein?

III.

Is a class suit a proper device to recover damages for picketing from an unincorporated labor organization?

Issues on the Merits

IV.

Did a labor dispute exist between the plaintiff and the former members of the crew of the SS Riviera concerning the terms and conditions of the employment aboard the vessel?

(a) Did the members of the crew of the SS Riviera who went on strike do so for the purpose of forcing plaintiff to enter into new articles with them at wage rates and other conditions more favorable to them than the articles they had signed?

(b) Did the members of the crew of the SS Riviera go on strike on account of the conditions existing on the vessel which they believed made it unseaworthy?

(c) Did plaintiff comply with all of the terms and conditions of said articles and perform all of its obligations to members of the crew of the SS Riviera?

V.

Did a labor dispute exist between the plaintiff and the Sailors Union of the Pacific, A. F. of L., in its capacity as collective bargaining agent for the former members of the crew of the SS Riviera concerning the terms and conditions of employment aboard the vessel and the representation of said crew members?

(a) If it is found that the former crew members broke their articles and deserted their ship, may their collective bargaining agent picket the vessel during the term of said articles to induce the owner of the vessel to re-employ the former crew members at wage rates and other conditions more favorable than contained in the articles?

VI.

Did a labor dispute exist between the plaintiff and

the S.I.U., Atlantic and Gulf District, A. F. of L., concerning the economic interest of the S.I.U., Atlantic and Gulf District, A. F. of L., and the working conditions existing aboard the SS Riviera?

VII.

Did a labor dispute exist between the S.I.U., Atlantic and Gulf District, A. F. of L., and the members of the crew employed by the plaintiff on the SS Riviera which crew members did not go on strike?

VIII.

Did the S.I.U., Atlantic and Gulf District, A. F. of L., picket the SS Riviera from December 10 through December 12, 1952, for the sole purpose of compelling the plaintiff to re-employ the striking members of the crew at wages and other conditions more favorable to them than contained in the articles they had signed, or was said picketing for that purpose and/or in furtherance of the labor dispute mentioned in Paragraphs V, VI and VII.

IX.

Does the existence of a labor dispute, if any, render damages, if any, sustained by the plaintiff damnum absque injuria?

(a) Does the Norris-LaGuardia Act merely limit the Court's jurisdiction for the issuance of injunctions in labor disputes, or does the act define the substantive rights of parties in labor disputes?

X.

Was the picketing by the defendants a lawful exercise of their right of free speech so that the damages, if any, sustained by the plaintiff are damnum absque injuria?

XI.

Were the damages sustained by the plaintiff, if any, a proximate result of the picketing of the vessel by the defendants?

(a) Was the refusal of the employees of contractors with whom plaintiff had contracted for repair and loading of the vessel to cross the picket line an independent intervening cause of plaintiff's damages, if any?

(b) Were the damages, if any, sustained by the plaintiff as a proximate result of the picketing by the defendants too indefinite and uncertain to be allowed?

(c) Was plaintiff deprived of the use of the vessel by virtue of its being in the custody of the U. S. Marshal pursuant to a libel in this Court, Civil No. 6652, on December 10, 1952?

(1) Was the vessel in the custody of the Marshal on December 10, 1952?

XII.

What is the amount of the damage sustained by plaintiff as a proximate result of the acts of defendants, if any?

XIII.

Should any judgment and decree in favor of plaintiff be entered against the defendants Morrison and Johnson and any funds or property held by S.I.U., Atlantic and Gulf District, A. F. of L., or for the general use and benefit of members of the S.I.U., Atlantic and Gulf District, A. F. of L., or any of them; or should it run only against defendants Morrison and Johnson or either of them?

Issues of Evidence

XIV.

Are defendants herein bound by the findings of fact and conclusions of law entered in Civil No. 6652 and estopped from relitigating questions there decided?

(a) Are defendants herein parties in privity with libelant in Civil No. 6652?

Denials

Plaintiff denies defendants' contentions and defendants deny plaintiff's contentions.

Exhibits

The parties have entered into a separate stipulation for the trial of Civil Nos. 6699, 6635, and 6645 together and for the identification and admission of exhibits at said trial.

The making and entry of this pretrial order shall supersede the pleadings at the trial, and this order

shall not, except by consent of both parties and of the court, be amended unless modified at the trial to prevent manifest injustice.

Dated this 22nd day of March, 1954.

/s/ GUS J. SOLOMON,
Judge.

Approved:

/s/ JOHN D. MOSSER,
Of Attorneys for Plaintiff.

/s/ RICHARD R. CARNEY,
Of Attorneys for Defendants.

[Endorsed]: Filed March 22, 1954.

[Title of District Court and Cause.]

Civil No. 6745

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for trial before the undersigned Judge of the above-entitled court, plaintiff being represented by Wood, Matthiessen, Wood & Tatum and Gunther F. Krause; defendants being represented by K. C. Tanner and Richard R. Carney. Counsel for the parties prepared a pretrial order and entered into a stipulation for the trial of this cause with Civil Nos. 6735 and 6699 and for the reception herein of transcripts of testimony and exhibits previously taken in these and certain

previous cases heard by the Court. The Court entered said pretrial order and approved said stipulation, heard the testimony and considered the evidence submitted by the parties and considered the briefs submitted by counsel. Now, being fully advised, the Court makes the following:

Findings of Fact

I.

At all times herein mentioned plaintiff was a corporation duly organized and existing under and by virtue of the laws of the Republic of Panama.

II.

At all times herein mentioned, defendant Jeff Morrison was and is a member, and defendant John Johnson was and is a permit member of the Atlantic and Gulf District of the Seafarers International Union, AFL, a voluntary unincorporated association. Defendant Morrison was the Northwest representative of said Atlantic and Gulf District; and, at the time of filing of this suit and of service on them, defendants Morrison and Johnson were each citizens and inhabitants of the States of Oregon or Washington, and of a state or country different from that of which plaintiff is a citizen.

III.

At all times herein mentioned the said Atlantic and Gulf District of the S.I.U., A. F. of L., had and has now a membership upwards of 5,000 men, many of whom are employed on ocean-going vessels, so that

it would be impracticable and impossible to join all of said members in this suit, as defendants.

At all times herein mentioned, Atlantic and Gulf District of the S.I.U., A. F. of L., operated under rules and regulations by virtue of which its members acted as an organized body, and its members had sufficiently identical interests in the subject matter of this suit to constitute a class subject to suit by service on representatives. Defendants Morrison and Johnson, by virtue of their position as members, and in the case of Morrison as an officer, of such union and their interest as defendants herein, are appropriate and capable persons to represent the interests herein of all of the members of Atlantic and Gulf District of the S.I.U., A. F. of L., and were sued herein as such representatives, as well as individually.

IV.

In March, 1952, plaintiff became the owner of the SS Riviera, and at all times herein mentioned said vessel was registered at the Port of Monrovia, and sailing under the flag of the Republic of Liberia.

V.

Between March, 1952, and August, 1952, the crew members of the steamship Riviera, principally German and British, and all citizens of countries other than the United States, signed a British form of articles whereby said crew members agreed to work on said ship on a voyage from Bremen, Germany, for a period of two years and further agreed that British Maritime Board conditions were to apply

to wages and hours of employment, and agreed that shore leave and cash advances were to be at the discretion of the master of said ship. By the terms of said Articles of Agreement, said crew members and plaintiff herein agreed upon the wages to be paid to the crew members and the provisions to be furnished to crew members, and the scale of wages and provisions as agreed upon were set forth in said agreement. The wage rates specified therein for each crew member were equal to or higher than those customarily then paid for similar employment in the British Merchant Marine. Said crew members further agreed by the terms of said articles to be obedient to the lawful commands of said master in everything relating to said ship and the stores and cargo thereof, whether on board, in boats, or on shore.

VI.

After leaving Bremen, said SS Riviera proceeded to New Orleans, Louisiana, where a cargo of grain was loaded. Said cargo was carried to and discharged at a port or ports in India where a cargo of coal was loaded. Said cargo of coal was carried to and unloaded to the Port of Portland, Oregon, where it arrived on September 3, 1952, and docked at Swan Island Dry Dock.

VII.

The purposes for which the vessel came to the Port of Portland, Oregon, were to complete an insurance survey, carry out repairs indicated as needed by said survey and voyage repairs, and to

load a cargo of wheat for the carriage of which to India the said vessel had been chartered by its owners.

VIII.

Plaintiff complied with all of its obligations under the terms of the ship's articles and the contract governing the relations between the plaintiff and members of the crew of said vessel.

IX.

On or about the 9th day of September, 1952, a number of members of the crew of the Riviera refused to obey the lawful orders of the master of said vessel and went on strike for the sole purpose of cutting down the term of their service from two years, the length of service agreed upon in their Articles, and to obtain a higher wage rate and other conditions more favorable to them than those agreed upon in said Articles.

X.

From the date of said strike up to and including September 26, 1952, the said striking crewmen of said vessel remained aboard the vessel, continued to occupy their quarters, refused to continue to work aboard said vessel and refused to leave the vessel. On or about September 18, 1952, plaintiff filed in this court a possessory libel, bearing Civil No. 6629. On September 25, 1952, said striking crewmen were ordered by order of this court in said possessory libel to leave said vessel and said crewmen, on September 26, 1952, left said vessel.

XI.

From September 9, 1952, until September 26, 1952, said striking members of the crew picketed the vessel. Said striking crew members or others acting for them picketed said vessel from September 26 through October 13, 1952, when they withdrew their picket line. On or about September 15, 1952, said striking members of the crew of the SS Riviera designated the Sailors' Union of the Pacific as their collective bargaining representative. Immediately after the withdrawal of said picket line and on October 14, 1952, members of the Sailors' Union of the Pacific, a voluntary unincorporated labor organization, acting pursuant to a resolution duly adopted by said Union, commenced picketing said vessel and continued to picket it until restrained and enjoined from further picketing by this court on November 26, 1952. Thereafter, and on that day, the picket line was removed from the said vessel. On November 28, 1952, a picket line was established at the vessel by three men acting for Local 90 of the National Organization of Masters, Mates and Pilots, A. F. of L., a voluntary unincorporated labor organization. On December 8, 1952, by decree of this court, members of said Local 90 of the National Organization of Masters, Mates and Pilots and all persons acting by, through, under or in concert with them, were enjoined from picketing or otherwise interfering with the use of said vessel. Thereafter, and on that day, said picket line was removed from the vessel. On December 10, 1952, a picket line was established at the vessel by

defendants Morrison and Johnson, acting for the Atlantic and Gulf District, S.I.U., A. F. of L. On December 12, 1952, by decree of this Court, members of the said Atlantic and Gulf District, S.I.U., A. F. of L., and all those acting by, through, under or in concert with them, were enjoined from picketing or otherwise interfering with the use of said vessel. Said picketing would have been continued had it not been so enjoined. All of said picketing, at, around or near the SS Riviera was conducted in a peaceful manner and without any violence.

XII.

Said picketing by members of the Atlantic and Gulf District, S.I.U., A. F. of L., was intended to prevent the repairing and loading of the SS Riviera; and the sole purpose of said picketing by the members of the Atlantic and Gulf District, S.I.U., A. F. of L., was to compel the plaintiff to re-employ the said discharged, striking members of the crew of the said SS Riviera for a shorter period than that stated in the articles, and at wage rates and other conditions more favorable to them than those stated in said articles, and to help the Sailors' Union of the Pacific in obtaining that objective after it and Local 90 of the National Organization of Masters, Mates and Pilots, AFL, had been restrained from picketing for that purpose.

XIII.

Employees of stevedoring and ship repair firms and other shore employees of employers with whom the owners of the SS Riviera had contracted for

work refused to so work while any of the said picket lines were present at or near the vessel. In the intervals when pickets were not present, from November 26 to November 28, 1952, and from December 8 to December 10, 1952, such stevedoring, ship repair and other shore employees did work on the vessel, and such employees returned to work immediately after the removal of the last of said picket lines, and thereafter completed the repairs, loading and other work ordered by the owners of the SS Riviera. Plaintiff was unable to use its vessel for the period from December 10, 1952, through December 12, 1952, and the sole proximate cause of such loss was the said picketing by defendants. Plaintiff was not deprived of the use of the SS Riviera by any technical custody of the United States Marshal during said period.

XIV.

There is no labor dispute between plaintiff and any of the defendants or Atlantic and Gulf District, S.I.U., A. F. of L., or between plaintiff and any of said members or former members of the crew of the SS Riviera, or between Atlantic and Gulf District, S.I.U., A. F. of L., and members of the crew of the SS Riviera who did not go on strike, or between plaintiff and Sailors' Union of the Pacific.

XV.

As a proximate result of defendants' said picketing, plaintiff has suffered immeasurable and irreparable damage to its reputation for honesty and fair dealing and its ability to obtain charters for

the SS Riviera has been impaired. As a further proximate result of defendants' said picketing, plaintiff has suffered definite and measurable damage, through loss of earnings and the expense of maintaining the SS Riviera and the loyal members of its crew during the period December 10 through December 12, 1952, in the total amount of $2,700.00. The port expenses of the vessel were at the rate of $250.00 per day and the loss of net earning $650.00 per day for the three-day period.

XVI.

That from September 9, 1952, until on or just prior to December 10, 1952, there were approximately 25 jobs open for seamen on the SS Riviera; that said jobs were filled on or about December 10, 1952, by the employment by the plaintiff of alien merchant seamen at the Port of Vancouver, B. C., and elsewhere, and transported to the vessel at Portland, Oregon; that none of said crew members who went on strike from said vessel were rehired aboard said vessel. Plaintiff began recruiting a crew at Vancouver, B. C., on or about December 7, 1952. Plaintiff could have obtained a full crew within a few days at any time after September 9, 1952, had it desired to do so.

XVII.

That the S.I.U., Atlantic and Gulf District, A. F. of L., is a voluntary association of unlicensed seamen who have been, and are now, employed in various capacities on sea-going vessels engaged in foreign and domestic commerce; that said members

have been and are now employed as seamen on vessels carrying cargoes of grain from ports in the United States and ports of India and the Far East; that said Union has collective bargaining agreements with many employers in said trade setting, the wages and working conditions for the members of said union engaged in said trade.

XVIII.

Many members of the Atlantic and Gulf District, S.I.U., A. F. of L., are employed aboard American flag vessels carrying grain between ports, including the Port of Portland, in the United States and ports in India, and said members and the union have an economic interest in the wages, hours and conditions of employment in said trade.

XIX.

The wage, exclusive of found, paid by the plaintiff aboard the SS Riviera for the services of a seaman was approximately $88.00 per month, which sum amounted to only about one-third of the amount of cash wages paid to seamen represented by the Atlantic and Gulf District, S.I.U., A. F. of L., while employed aboard United States flag vessels engaged in the trade of carrying cargoes of grain under charter from ports of the United States to ports in the Orient.

XX.

All the agreed facts set forth in the pretrial order are true.

Whereupon the Court makes the following

Conclusions of Law

I.

The Court has jurisdiction of the subject matter. Plaintiff has no administrative remedy under the National Labor Relations Act as amended by the Labor Management Relations Act of 1947, and the Court is not deprived of jurisdiction by the existence of any such remedy.

II.

The Court has jurisdiction of the parties. This is a true class suit and defendants Morrison and Johnson are the representatives of all of the members of the Atlantic and Gulf District of the S.I.U., A. F. of L.

III.

Defendants' picketing was for an unlawful purpose. There is no labor dispute between plaintiff and any of the defendants or Atlantic and Gulf District, S.I.U., A. F. of L., or between plaintiff and any of said members or former members of the crew of the SS Riviera, or between the Atlantic and Gulf District, S.I.U., A. F. of L., and members of the crew of the SS Riviera, or between plaintiff and the Sailors' Union of the Pacific. Nor was there any labor dispute within the definition of any Federal Statute. Defendants' picketing was not a lawful exercise of their right of free speech.

IV.

Defendants' said picketing was the sole proximate cause of plaintiff's said damages. The failure of

employees of independent contractors to cross defendants' picket line was not an independent intervening cause of plaintiff's damage.

V.

Plaintiff is entitled to have judgment and decree entered in its favor, for the sum of $2,700.00, together with its costs and disbursements, against Jeff Morrison and John Johnson, each member of the Atlantic and Gulf District, S.I.U., A. F. of L., and Atlantic and Gulf District, S.I.U., A. F. of L., an unincorporated association of seafaring men with its West Coast headquarters in San Francisco, California, and each and all of them; and to have execution issue thereon against the individual property of Jeff Morrison and John Johnson and against any property held by the Atlantic and Gulf District, S.I.U., A. F. of L., or for the use and benefit of the members of Atlantic and Gulf District, S.I.U., A. F. of L., whether held in the name of the association or by others for the association; but not to have execution thereon against the individual property of any member of Atlantic and Gulf District, S.I.U., A. F. of L., not individually made a party herein, judgment against such members being entered solely for the purpose of establishing res judicata as to issues litigated herein.

Dated this 28th day of October, 1954.

/s/ GUS J. SOLOMON,
District Judge.

Lodged August 17, 1954.

[Endorsed]: Filed October 28, 1954.

In the District Court of the United States
for the District of Oregon
Civil No: 6745

COMPANIA NAVIERA HIDALGO, S.A.,
Plaintiff,

vs.

JEFF MORRISON and JOHN JOHNSON, Individually and as the Representatives of All of the Members of the Atlantic and Gulf District, Seafarers International Union, AFL,
Defendants.

FINAL DECREE

This cause came on for trial before the undersigned Judge of the above-entitled court, plaintiff appearing by its attorneys, Wood, Matthiessen, Wood and Tatum, John D. Mosser and Gunther F. Krause, and defendants appearing by their attorneys, K. C. Tanner and Richard R. Carney. Counsel for the parties prepared a pretrial order and entered into a stipulation for the trial of this cause with Civils Nos. 6699 and 6735, and for the reception herein of transcripts of testimony and exhibits previously taken in these and certain previous cases heard by the Court. The Court entered said pretrial order, approved said stipulation, considered such testimony and exhibits and the other evidence offered by the parties, and considered the brief submitted by counsel. The Court now being fully advised and having made and filed its findings of fact and conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $2,700.00, together with its costs and disbursements of and from Jeff Morrison, John Johnson, each member of the Atlantic and Gulf District, Seafarers International Union, AFL, and the Atlantic and Gulf District, Seafarers International Union, AFL, an unincorporated association of seafaring men with its West Coast headquarters in San Francisco, California, and each and all of them; and

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of Jeff Morrison and John Johnson and against any property held by the Atlantic and Gulf District, Seafarers International Union, AFL, or for the use and benefit of the members of Atlantic and Gulf District, Seafarers International Union, AFL, whether held in the name of the association or by others for the association; but execution shall not issue hereon against the individual property of any member of the Atlantic and Gulf District, Seafarers International Union, AFL, other than those heretofore individually named and made parties herein.

Dated this 28th day of October, 1954.

/s/ GUS J. SOLOMON,
District Judge.

Lodged August 17, 1954.

[Endorsed]: Filed October 28, 1954.

[Title of District Court and Cause.]

No. Civ. 6745

NOTICE OF APPEAL

To the Plaintiff Above Named, and to Wood, Matthiessen, Wood & Tatum and John D. Mosser and Gunther F. Krause, its attorneys:

You, and each of you, will please take notice that the defendants above named do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Final Decree entered in the above-entitled suit on the 28th day of October, 1954, by the United States District Court for the District of Oregon, and said defendants appeal from said Final Decree and from each and every part thereof.

/s/ RICHARD R. CARNEY,

/s/ TANNER & CARNEY,

Attorneys for Defendants.

Service of copy acknowledged.

[Endorsed]: Filed November 26, 1954.

[Title of District Court and Cause.]

BOND

Know All Men by These Presents: That we, Jeff Morrison as principal, and Mabel Doane as surety, are each held and firmly bound unto Compania Naviera Hidalgo, S. A., in the sum of Two Hundred

Fifty ($250.00) Dollars, lawful money of the United States of America, to be paid to the said Compania Naviera Hidalgo, S. A., for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Now the Condition of this obligation is such that if the above-bounden Jeff Morrison as principal and Mabel Doane as surety shall well and truly pay or cause to be paid unto the above-named Compania Naviera Hidalgo, S. A., the costs adjudged herein if the appeal is dismissed or the judgment affirmed, or such costs as the appellate court may award if the decree is modified, then this obligation shall be void; otherwise to remain in full force and effect.

Witness our hands and seals this 26th day of November, 1954.

/s/ JEFF MORRISON,
Principal;

By /s/ RICHARD R. CARNEY,
Its Attorney.

/s/ MABEL DOANE,
Surety.

State of Oregon,
County of Multnomah—ss.

I, Mabel Doane, being first duly sworn, on oath, depose and say: That I am a resident of said county and state, and a freeholder therein, and am worth the sum of $500.00 over and above all my just debts

and legal liabilities, and exclusive of property exempt from execution, so help me God.

/s/ MABEL DOANE.

Subscribed and sworn to before me this 26th day of November, 1954.

[Seal] /s/ RICHARD R. CARNEY,
Notary Public for Oregon.

My Commission Expires March 22, 1958.

Service of copy acknowledged.

[Endorsed]: Filed November 26, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME IN WHICH TO FILE RECORD ON APPEAL

This matter coming on for hearing upon the application of the defendants for an order extending the time in which to file the record on appeal and docket the cause in the appellate court, and it duly and satisfactorily appearing to the court that the notice of appeal was filed herein on November 26, 1954, and that the time for filing the record on appeal has not yet expired, and that the testimony has not yet been transcribed by the reporter and may not be transcribed by the reporter in time for transmission to the Court of Appeals within 40 days from said date, and it further appearing that the

parties are in the progress of preparing a transcript of the testimony in narrative form, and that additional time is needed to complete the preparation of said testimony, and the court being fully advised,

It Is Hereby Ordered that the time within which to file and docket the record on appeal in the above-entitled cause in the Court of Appeals be and the same hereby is extended to February 23, 1955.

Dated in open court December 28th, 1954.

/s/ GUS J. SOLOMON,
Judge.

It Is Hereby Stipulated and Agreed by and between the parties hereto through their respective counsel that an order may be entered herein extending the time to file the record on appeal and docket the cause in the appellate court to and including February 23, 1955.

/s/ JOHN D. MOSSER,
Of Attorneys for Plaintiff.

/s/ RICHARD R. CARNEY,
Of Attorneys for Defendants.

[Endorsed]: Filed December 28, 1954.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,
District of Oregon—ss.

I, F. L. Buck, Acting Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Pre-trial Order; Findings of Fact and Conclusions of Law; Order to File Proposed Findings and Objections to Findings; Defendants' objections to plaintiff's Proposed Findings of Fact and Conclusions of Law; Defendants' Proposed Findings of Fact and Conclusions of Law; Final Decree; Notice of Appeal; Bond on Appeal; Order Extending Time in Which to File Record on Appeal; Designation of Contents of Record on Appeal; Statement of Points Upon Which Defendants Intend to Rely on Appeal; and transcript of Docket Entries constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 6745, in which Compania Naviera Hidalgo, S. A., is plaintiff and appellee, and Jeff Morrison, John Doe, Richard Roe and John Roe, individually and as the representatives of all of the members of the Atlantic and Gulf Coast District, Seafarers International Union, A. F. of L., are defendants and appellants; that the said record has been prepared by me in accordance with the designation of record on appeal filed by the appellants, and in accordance with the rules of this court.

I further certify that there is enclosed herewith a copy of the court's oral opinion (not filed), and

I further certify that the cost of filing notice of appeal, $5.00, has been paid by appellants.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 18th day of February, 1955.

[Seal] /s/ F. L. BUCK,
Acting Clerk.

[Endorsed]: No. 14663. United States Court of Appeals for the Ninth Circuit. William Benz and Robert Williams, Individually and as Representatives of All the Members of Sailors' Unions of the Pacific and Anyone That Sailors' Union of the Pacific Claims to Represent for the Purpose of Collective Bargaining, Appellants, vs. Compania Naviera Hidalgo, S.A., Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed February 21, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 14664. United States Court of Appeals for the Ninth Circuit. M. D. McRae, et al., Individually and as the Representatives of All of the Members of Local 90 of the National Organization of Masters, Mates and Pilots of America, A. F. of L., Appellant, vs. Compania Naviera Hidalgo, S. A., Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed February 21, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 14665. United States Court of Appeals for the Ninth Circuit. Jeff Morrison, et al., Individually and as the Representatives of All of the Members of the Atlantic and Gulf Coast District, Seafarers International Union, A. F. of L., Appellants, vs. Compania Naviera Hidalgo, S. A., Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed February 21, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14663

WILLIAM BENZ, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

No. 14664

M. D. MacRAE, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

No. 14665

JEFF MORRISON, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY

Come now the appellants in each of the above-entitled causes, and for their Statement of Points Upon Which They Intend to Rely in each of the above cases, say:

1. The court below erred in concluding and holding that the court has jurisdiction of the subject matter of the suit, and in refusing to find that the remedy of the plaintiff is under the provisions of the National Labor Relations Act as amended by the Labor-Management Relations Act of 1947, and in refusing to hold that the court below was deprived of jurisdiction by the existence of such remedy.

2. The court below erred in holding and concluding that the court has jurisdiction of the subject matter of the suit, and in refusing to dismiss the suit on account of the existence of a labor dispute pursuant to the Norris-LaGuardia Act.

3. The court below erred in finding and concluding with respect to the purpose of the picketing by the former crew members of the SS Riviera and by the defendants, and in holding that the picketing by the defendants was for an unlawful purpose, and in failing to find and hold that the picketing was pursuant to a labor dispute.

4. The court below erred in finding and concluding that the conduct of the defendants was the proximate cause of the idleness of the plaintiff's vessel and the plaintiff's damages because thereof, and in refusing to find and conclude that the plaintiff's damages, if any, were caused by the independent intervening acts of third persons in refusing to work aboard the vessel and by the libel of the vessel and the custody of the vessel by the United States Marshal, and by the failure of the plaintiff

to have a crew aboard
of its idleness.

5. The court below
a true class suit, and i
each member of the u
decreeing that the pl
against any of the pr
for the use and benefit
whether held in the na
for the union.

6. The court below
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for any sum against th
to dismiss the suit.

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/s/ RIC

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ion and the union, and in
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f the members of the union,
ne of the union or by others

rred in finding and conclud-
as entitled to have judgment
defendants, and in refusing

NER & CARNEY,

ARD R. CARNEY,

ttorneys for Appellants.

nowledged.

February 23, 1955.

Nos. 14663-14664-14665

United States
Court of Appeals
for the Ninth Circuit

WILLIAM BENZ, et al., Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S. A., Appellee.

M. D. MacRAE, et al., Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S. A., Appellee.

JEFF MORRISON, et al., Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S. A., Appellee.

Supplemental
Transcript of Record
Pre-Trial Exhibits

Appeals from the United States District Court for the District of Oregon

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, California —5-9-54

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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PRE-TRIAL EXHIBIT No. 11

[Title of District Court and Causes 6652, 6661.]

DEPOSITION OF LESLIE H. MOORE

For Perpetuation of Testimony

October 15, 1952

* * * * *

LESLIE H. MOORE

a witness called for perpetuation of testimony, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mosser): Mr. Moore, what is your present occupation?

A. Salesman for a ship chandlery business.

Q. Is that business here in Portland?

A. Yes.

Q. Marden & Hagist? A. Yes.

Q. How long have you been in the ship chandlery business?

A. Two years and two months. Are you asking me, or how long has my firm been in it?

Q. You. A. Two years and two months.

Q. In your work for Marden & Hagist have you had any contact with the vessel S. S. Riviera or its owners during the last, well, since September 3, 1952, or before that? A. Yes, I have.

Q. Can you describe briefly what that is?

A. Well, I met the vessel when it arrived in Portland.

Pre-Trial Exhibit No. 11—(Continued)
(Deposition of Leslie H. Moore.)

Q. Was that on your own initiative, or did you have any instructions or request to meet the vessel?

A. We had request by telephone from the owners in New York.

Q. Who did you see on the vessel?

A. The Master and the Steward, the Chief Mate, and the Chief Engineer.

Q. Did they place any orders for supplies through you? A. Yes, they did.

Mr. Mosser: I ask that this be marked Claimants' Exhibit 1.

(Document, Port Order, marked Claimants' Exhibit 1 for Identification.)

Q. I show you Claimants' Exhibit 1 and ask you if you know what that is?

A. It's a port order for the vessel to use for fresh food for the crew. It's a normal port order for most vessels, has to be delivered right after she has arrived. Sometimes they even cable in and have it delivered.

Q. Now, did you, yourself, receive that order?

A. Yes, I did.

Q. Who did you receive it from?

A. I was instructed by the Master, Captain Cowden, to go down and see the Chief Steward, and he gave me this order.

Q. To your knowledge, was that order filled?

A. Yes.

Q. On what date were those supplies delivered?

Pre-Trial Exhibit No. 11—(Continued)
(Deposition of Leslie H. Moore.)

A. I would have to check our packing date to make sure.

Mr. Mosser: I ask that this be marked Claimants' Exhibit 2.

(Document, Packing Slip, marked Claimants' Exhibit 2 for Identification.)

Q. Is this the packing slip or delivery slip to which you referred? A. Yes, it is.

Q. What was the date from that?

A. The third of September.

Q. To your knowledge, have any other supplies been delivered in the way of foodstuffs aboard the S. S. Riveria by your firm since that date?

A. Yes, they have.

Mr. Mosser: If we could staple these together and mark them down as one exhibit probably, unless you want to separate them, just various dates, that is all.

(Documents, five packing slips, marked Claimants' Exhibit 3 for Identification.)

Q. I show you Claimants' Exhibit 3 and ask you what those are?

A. This list of port stores here is a routine order that a vessel uses while in port and before placing and receiving her sea store order.

Q. Do those slips indicate the supplies which have been delivered aboard the vessel on the dates shown on the slips? A. That is correct.

(Documents, four sea stores orders, marked Claimants' Exhibit 4 for Identification.)

Pre-Trial Exhibit No. 11—(Continued)

(Deposition of Leslie H. Moore.)

Q. I show you Claimants' Exhibit 4 and ask you what that is?

A. This is the Steward's order for sea stores to be delivered on the vessel usually one or two days before sailing for consumption on the outward bound voyage.

Q. Is that a list that you received from the Steward of the S. S. Riviera? A. Yes.

Q. On what date was that order placed with you? A. The eighth of September.

Q. Have those supplies been delivered aboard the ship yet?

A. No, because the vessel hasn't even begun loading her cargo. They like to receive them fresh. That is the reason. I would like to add this, the Captain told me that this list was subject to increase, depending upon their destination, final destination.

Q. Now, with regard to those orders of sea stores, both the order for sea stores and the order for port stores, from your experience in the ship chandling business would you say that the supplies ordered were normal for a vessel of the type of the S. S. Riviera, or are they unusual in any way?

Mr. Carney: Well, I object to that because it would have to take into consideration what stores they had on board, and the answer would always depend on what the ship had on board. He does not have any information with respect to that and——

Mr. Mosser: I will rephrase my question.

Q. With regard to the orders for sea stores and

Pre-Trial Exhibit No. 11—(Continued)
(Deposition of Leslie H. Moore.)

port stores which have been delivered by your firm or will be delivered by your firm to the S.S. Riviera, are the stores ordered typical of those which, in your experience as a ship chandler, you have seen ordered and delivered aboard other vessels of a similar nature, or are they in any way unusual?

A. I can say from a quality standpoint, in comparing this list with a list of other tramp traders, it is unusual because there are quality items on the list that are not usually carried on tramp vessels.

Q. What are some of those items?

A. For instance, fresh grapefruit, grapefruit juice, and the fresh apples and ice cream powder, there are many tramp traders calling at this port that believe that is a waste of money.

Q. With regard to items which in themselves are not unusual, such as for example, I assume, eggs and meats, how does the quality of those items delivered to the Riviera compare with the quality of items, similar items delivered to other tramp ships?

A. The quality is the same. It is also the same that we deliver to American flag vessels.

Q. Has your firm also received various orders for deck and engine supplies to be delivered to the vessel? A. Yes, we have.

Q. Do you have copies of any order forms or delivery forms covering those items with you?

A. I have order forms. I can submit them, depending upon how long you will keep them.

Q. Well, I will ask that you produce them at

Pre-Trial Exhibit No. 11—(Continued)
(Deposition of Leslie H. Moore.)

this time, and we will see that photostats are made either for you or ourselves if there is any delay in handling them.

A. Please make the photostats for yourselves because we need those. (Witness produces documents.) That is for the engine department.

Mr. Mosser: Mark those Claimants' Exhibit 5, I think, at this time.

(Documents, twelve order forms, marked Claimants' Exhibit 5 for Identification.)

The Witness: This is for the deck department, and you also have another one here for the deck department.

(Documents, three order forms, marked Claimants' Exhibit 6 for Identification.)

(Documents, two order forms, marked Claimants' Exhibit 7 for Identification.)

Q. (By Mr. Mosser): I hand you Claimants' Exhibit 5 and ask you to identify that.

A. It is an order for engineroom stores,—engine department stores I should say.

Q. I hand you Claimants' Exhibit 6 and ask you to identify that.

A. That's a deck department order.

Q. I hand you Claimants' Exhibit 7 and ask you to identify that.

A. It is a deck department order for life-boat equipment.

Q. Have any of those supplies indicated on

Pre-Trial Exhibit No. 11—(Continued)
(Deposition of Leslie H. Moore.)

Claimants' Exhibits 5, 6, and 7 been delivered to the ship yet?

A. Sometimes there are items that they need immediately. I will check here and see if they were. (Witness examines exhibits.) The only thing that has been delivered was an electric coffee pot.

Q. Were these various orders placed on the dates that appear in a spot marked "date" in the upper right-hand corner of the forms, referring again to Claimants' Exhibits 5, 6, and 7?

A. Yes. As you will notice, the engine and deck department orders, excepting the deck department life-boat equipment order, were placed the second of September.

Mr. Carney: The second?

The Witness: The second. We received these orders through the mail from the New York office. They had been forwarded on from the vessel's last port to the New York office.

Q. (By Mr. Mosser): With regard to the quality of the items appearing on Claimants' Exhibits 5, 6, and 7, can you say anything as to whether they are standard or very high or average for a ship so that you can in any way identify the quality?

A. They are of standard quality.

Q. Would that be for foreign ships or for foreign and American vessels?

A. Foreign and American. It is difficult to get cheap quality of any kind in deck and engine stores.

Pre-Trial Exhibit No. 11—(Continued)
(Deposition of Leslie H. Moore.)

I would say this——

(Mr. Carney leaves room.)

Q. Wait until he gets back. Let's staple these together and mark them.

(Documents, four order forms, marked Claimants' Exhibit 8 for Identification.)

Q. A moment ago you started to say something, and we interrupted you. Did you have any remarks that you wished to make with regard to these orders shown on the Claimants' Exhibits 5, 6, and 7?

Mr. Carney: I think that is too general. I think if you want to ask him something specific you ought to ask. I object to just having him make speeches about the orders.

The Witness: I am sorry I started anything.

Q. (By Mr. Mosser): I will ask you to go ahead and answer the question.

A. I can say this is one of the very few orders we have received from a tramp vessel registered under a foreign flag for life-boat equipment.

Q. I now show you Claimants' Exhibit 8 and ask what that is?

A. This is an additional,—there is one order here dated the 8th of September.

Q. Don't tear them off. We want them kept together.

A. All right, for engine-room supplies, two orders for engine-room supplies and two orders for deck department supplies.

Pre-Trial Exhibit No. 11—(Continued)
(Deposition of Leslie H. Moore.)

Mr. Carney: What are the numbers of that exhibit?

Mr. Mosser: Eight, and those were placed after the vessel arrived in port?

A. Yes.

Q. Have you any idea of the total money value of all these orders for both food and deck supplies which have been placed for the S.S. Riviera?

A. I am unable to even accurately give you an estimate. Our Pricing Department handles all of that, and because the order was subject to increase we haven't bothered to make an estimate of the total.

Q. Will you be in Portland on the 16th of October, 1952, and days immediately after that?

A. No, I will be out of town.

Q. You are going where?

A. To Eureka as soon as I finish.

Q. Eureka, California? A. Yes.

Mr. Mosser: That is all the questions I have.

Cross Examination

Q. (By Mr. Carney): May I see some of those exhibits you had there? A. Yes.

Q. I am referring now to Exhibit No. 1. Was this Exhibit No. 1 which you have described as the Steward's order for port stores, was it written by the Steward on the vessel?

A. Yes, it was.

Q. The usual practice is, is that when a ship

Pre-Trial Exhibit No. 11—(Continued)
(Deposition of Leslie H. Moore.)

comes in and your firm is to service that ship as the chandler that the Steward will give you, upon arrival of the ship, his order for the stores for the expected duration of the ship in port; is that right?

A. That is right. Insofar as sometimes there are two or three port store orders, depending on availability of longshore gangs and the vessel's length of stay, it is hard to estimate it sometimes.

Q. You received that order of port stores on the third of September? A. Yes.

Q. That was the first day the ship came in. You went out to the ship and got it yourself?

A. Yes.

Q. Do you know when those things were delivered to the ship?

A. On the date of the packing slip there.

Q. The packing slip, which is Exhibit No. 2, is date 9/3 at the top. Does that always indicate that it is delivered on that day?

A. Yes, the stores are prepared, placed in the truck, and then the list is taken to the secretary to type, and then it is delivered.

Q. These matters which are Exhibit 3, that group of packing slips, are the other deliveries which you made to the Riviera since it has been in port; is that right? A. That is correct.

Q. That is, deliveries of foodstuffs?

A. Yes, sir.

Q. Do you know exactly when it was that you received this Exhibit Number 4 which you called the

Pre-Trial Exhibit No. 11—(Continued)
(Deposition of Leslie H. Moore.)

order for sea stores? Do you know when you received that order?

A. The Steward wrote it up while I was in his cabin, and dated it at that time.

Q. It was dated at that time. Now, he has got it 8/9. Does that mean the 8th day of September?

A. Of September, yes.

Q. Did you go with the Steward and inspect the refrigerators and other places where he stored his provision, prior to his writing up the order, or did you conduct your business only up in his office?

A. I went through one food locker. That is all.

Q. Was that a refrigerated locker or——

A. Yes, it was.

Q. I notice on the first page of Exhibit Number 4 you have made a notation there. Is that in your writing at the bottom of the page?

A. That was my note to Mr. Mosser identifying this list of stores as the sea stores not yet delivered.

Q. You put that on then at a more recent date?

A. I put that on yesterday.

Q. Yesterday? A. That's right.

Q. When this order was given you for sea stores were you told at that time approximately what date this order should be delivered?

A. No, I wasn't.

Q. Isn't that what is usually done when they give you an order for sea stores; they tell you they are going to need it on, approximately a certain date?

Pre-Trial Exhibit No. 11—(Continued)
(Deposition of Leslie H. Moore.)

A. Well, I knew from the Agents within two or three days.

Q. What date was that?

A. I can't say for sure now, for this reason, the vessel was undergoing repairs, and they were not sure how long the repairs would take.

Q. But you said you knew within two or three days from the Agents when the vessel was expected to leave. Now when, what date was that?

A. At that time I knew within two or three days. Offhand now, I——

Q. Well, I mean at that time. Looking back on about the 8th or 9th of September, when did you think then the vessel was going to leave, from your information?

A. I understand what you mean now. Within,—we were to store the vessel within approximately four days after receipt of that. That was my estimate.

Q. About four days after the eighth so approximately on the twelfth you were to have your stores aboard? A. Approximately, yes.

Q. Yes. A. Depending on ship repair.

Q. Did you transact all your business with the Chief Steward with respect to provisions, that is, with respect to foodstuffs, food supplies?

A. Originally we were instructed by New York before the vessel's arrival to contact the Captain and take care of any port stores and sea stores they would need, but then I called upon the Captain as

Pre-Trial Exhibit No. 11—(Continued)

(Deposition of Leslie H. Moore.)

is the custom, and he instructed me to see the Steward.

Q. Do you know the name of the New York Company that instructed you to go out to the vessel?

A. I believe it is the Southern Star Shipping Company.

Q. I think you stated that some of the items on your list of sea stores were unusual, such as grapefruit and grapefruit juice. You say unusual for tramp type vessels? A. That is correct.

Q. What do you mean by a tramp vessel? What is your definition of a tramp vessel?

A. I should add to that, a tramp vessel under a foreign flag. A tramp vessel is one that secures cargo from any place in the world.

Q. It is a vessel, isn't it, that does not run on a set schedule?

A. A non-schedule sailing vessel.

Q. What you are referring to is that it was an unusual, that grapefruit and some of those other items were unusual items for a flag vessel which is a Liberian flag or a Panamanian flag?

A. That is correct.

Q. Now, as I read the order, there are three cases of grapefruit; isn't that right?

A. If that is what it says.

Q. I show you the exhibit. A. Yes.

Q. Approximately what is the value of three cases of grapefruit?

Pre-Trial Exhibit No. 11—(Continued)
(Deposition of Leslie H. Moore.)

A. I would say around,—we have not bought any for quite a while. It's a rare purchase. I would say from twenty-five to thirty dollars.

Q. That is total? A. Total, yes.

Q. And you said apples, and they had apples here as two cases; isn't that what it indicates?

A. Yes.

Q. What is the value of two cases of apples?

A. Seven dollars.

Q. Now, this grapefruit juice, you have here six cases, and you have in parenthesis after it "24's." I am still referring to Exhibit Number 4. Does that mean 24 cans in a case? A. In a case, yes.

Q. What size can are they then?

A. They are Number 2 size.

Q. Number 2 size is about a pint, isn't it?

A. Yes.

Q. They are not the big gallon size, are they?

A. No, that isn't.

Q. Did you deliver any fresh milk to the vessel?

A. If it isn't on the list there we didn't deliver it, if it isn't——

Q. "Ev" milk means evaporated milk, doesn't it? A. Evaporated, yes.

Q. Now, I notice on page 2 of Exhibit 4 they have "Beef, 300 pounds." What type of beef is that? A. That is a commercial grade beef.

Q. Do you deliver commercial grade?

A. Commercial grade, and it is, sometimes it is quartered. There were no instructions given, but

Pre-Trial Exhibit No. 11—(Continued)

(Deposition of Leslie H. Moore.)

unless it is told otherwise we deliver a commercial grade beef.

Q. You deliver it in quarters; is that the idea?

A. Sometimes in eighths.

Q. Exhibit 5 and Exhibit 6 are, both are typewritten orders, and they are dated 9/2/52. Now, those are the orders which you received from the Southern Star Shipping Company; is that right?

A. That is correct.

Q. Through the mail prior to the arrival of the vessel? Exhibit Number 7 is also typewritten. Was that given you by the company or,—locally, or did that order also come from——

A. That was given to me by the Port Engineer.

Q. Port Engineer for the company?

A. Yes.

Q. Now, these orders which are written in longhand, which are Exhibit 8, were they written by you?

A. Some of them were; some of them were written,—let's see. These are the only two that were written by me.

Q. Now, you say "these." The top two were written by you? A. The last two.

Q. The last two, the ones, orders 9923 and 9921 were written by you? A. Yes.

Q. I am indicating the number in the upper right-hand corner of the order. Who gave you these orders? Did someone give you those orally?

A. The Chief Mate and the Chief Engineer gave

Pre-Trial Exhibit No. 11—(Continued)

(Deposition of Leslie H. Moore.)

me those orders, depending on the department. Those orders I brought in in notes written in our notebook, also given me orally, and they were copied by our purchasing agent.

Q. I see. The first two orders in the exhibit, 9824 and 9919, were also given to you but written up by someone in your office; is that right?

A. Yes.

Q. They were written up on the days that are indicated on them? A. Yes.

Mr. Carney: I think that is all.

Redirect Examination

Q. (By Mr. Mosser): With regard to the items of food that you referred to as unusual, did you mean to indicate that those were unusual only for Panamanian and Liberian ships, or are they also unusual for other foreign flag vessels?

A. The only other foreign flag vessels that normally, I say normally, order food of that type are the Swedish and Norwegian vessels.

Q. Under the rules of the Court you have the right to read your testimony when it is transcribed and to sign it before it will be received in evidence. You can waive that right, however, if you want to. Do you waive your signature to this testimony?

A. I will just waive it.

(Deposition concluded.)

PRE-TRIAL EXHIBIT No. 12

Copy of Agreement Negotiated Between Sailors' Union and Crew of Panamanian Ship "Makiki" dated May 12, 1952.

"Makiki"—Panamanian Wagon

On May 5th, the crew of the Makiki, formerly an American ship operated by the Matson Company, now operated by an Italian firm flying the Panamanian flag, came into the Sailors' hall and asked us to help them.

They had been shipped in Italy to join the ship in Hamburg on or about the 7th of December 1951. They took the ship from Hamburg down to Italy where they loaded salt and from there they went to Japan. When they got aboard the ship, they, the Company, conveniently told them that they would only pay them from the first of January. After discharging the salt in Japan, they proceeded to San Francisco to take another load of salt. As a matter of fact, the Company had three charters to carry salt to Japan from San Francisco.

When the crew came in here, they asked for a draw and they couldn't get any money and it was very evident that they had been swindled all the way around. Their wages ran from approximately $40 a month to $135 a month for the skipper. They received no overtime and had no conditions and nothing to eat, so the crew took action in San Francisco. They refused to work and went on strike.

Inasmuch as they are aliens, they could not get off the ship here and the Company wouldn't pay them off. They had no money and they were in a hell of a shape. They came to the Sailors' Union hall; they had seen the Sailors' Union building and they had heard about the Sailors' Union of the Pacific and came up here for help.

We had a meeting with some of the Sailors from the ship and we found o that they belonged to an Italian Seamen's Union which is also affiliated with the International Transport Workers' Federation, with which we are also affiliated. The I.T.F. is an anti-commie Federation of Transportation Workers on a world wide scale. After checking their story, we found out it would only be our duty to help these men out in their trouble.

In the name of the International Transportworker's Federation (I.T.F.) we placed three pickets down on the dock in front of the ship; notified the Towboat Company she was unfair; notified the A. F. of L. Metal Workers who were working aboard the ship she was unfair—they respected the picket line and the Towboat men respected it—and consequently, the ship was deader than a mackerel.

I was visited by the Company's representative in San Francisco, who is an attorney, and he asked me what they could do to settle the dispute. I told him the ship would lie here until such time as they paid the crew off here in San Francisco in American money from the time they came aboard the ship according to a scale that I would draft up for him. He asked me to do so, which I did, and they cabled

the same to Italy for approval by the Company. Finally, after haggling around the Company agreed to our terms and the terms are as follows:

	Old Wages Per Month	New Wages Per Month	Raise
Captain	$135.00	$600.00	$465.00
Chief Engineer	125.00	500.00	
Chief Mate	109.00	400.00	301.00
Second Mate	96.00	350.00	254.00
Third Mate	84.00	300.00	216.00
Cadet	53.00	150.00	97.00
Radio Operator	96.00	300.00	204.00
Electrician	65.00	175.00	110.00
Bos'n	70.00	175.00	105.00
Carpenter	65.00	175.00	110.00
Donkeyman	70.00	175.00	105.00
A.B.'s	60.00	150.00	90.00
Deck Boys	45.00	125.00	80.00
Oilers	60.00	150.00	90.00
Firemen	60.00	150.00	90.00
Chief Cook	65.00	200.00	135.00
Second Cook	60.00	150.00	90.00
Messman	60.00	150.00	90.00

Formerly, there was no overtime rate paid nor were there any hours of work.

New schedule of overtime: For Officers—$1.50 per hour; for unlicensed men—$1.25.

Hours of Work: In Port: 8 hours per day, 5 days a week, Mondays to Fridays—40 hours.

At Sea: Daymen, Bos'n, Carpenter, Electrician, and Donkeyman—44 hours per week, Monday through Saturday noon. Watchstanders—56 hours

per week. Overtime for all work Sundays and holidays.

Overtime for Stewards Department, Sundays and holidays at sea, and Saturdays, Sundays and holidays in port.

Bonus payment to be made as follows: $2.50 from the day vessel crosses 180th Meridian until departure from port of discharge in Japan and continuing if vessel returns eastbound until vessel again crosses the 180th Meridian, payable to all hands.

These wages are retroactive from the day the crew boarded the vessel in Hamburg. The Company agrees to pay this off here in San Francisco within the next day or so in the Sailors Union Office. Each man will receive the wages he has coming under the new scale negotiated by the Sailors' Union of the Pacific on behalf of the crew.

When the men get their money, they will pay off the ship completely and re-sign under new articles as per the agreement drafted and signed and okehed by the Sailors' Union of the Pacific before the Panamanian Consul.

Articles are to run for six months or until earlier completion of trading in United States West Coast ports. On termination of articles, owners must, at his option, either return the vessel to an Italian port at the same wages for sign-off there, or return crew to Italy at his expense with first-class transportation.

This agreement has the best conditions and the highest wages ever obtained for any crew sailing

out of any European port under a foreign flag, and it will serve as a lesson to any Panamanians or any other cheap foreign flag companies operating ships on the Pacific Coast in competition with American seamen and American-flag ships.

We realize the crew on this particular ship were victims of a swindle pulled by the owners which can only be done under the Panamanian flag. They came to us—they are seamen—and under the true meaning of the "Brotherhood of the Sea" we helped them.

[Title of District Court and Cause No. 6699.]

PRE-TRIAL EXHIBIT No. 14

AFFIDAVIT OF WILLIAM BENZ

State of Oregon,
County of Multnomah—ss.

I, William Benz, being first duly sworn, on oath depose and say:

* * * * *

That prior to September 26, 1952, the members of the crew personally picketed the vessel as members of the International Transport Workers' Federation, a union which is affiliated with the Sailors' Union of the Pacific; that after September 26, 1952, for a time the picketing of the vessel was conducted by sailors who were friends of the members of the crew who had gone on strike; that on October 10, 1952, the Portland Branch of the Sailors'

Union of the Pacific adopted a resolution, copy of which is attached hereto and made a part hereof, and which resolution declared the plaintiff, Compania Naviera Hidalgo, unfair to organized labor and to the Sailors' Union of the Pacific, and further resolved that the conditions on the plaintiff's ships be publicized by picketing and otherwise; that thereafter, and on or about October 14, 1952, this resolution was also adopted by headquarters of the Sailors' Union of the Pacific in San Francisco, California, and concurred in by the Branches of the Sailors' Union of the Pacific; that since that time the Sailors' Union of the Pacific has picketed the SS Riviera as the collective bargaining agent of the members of the crew of the vessel on account of the labor dispute existing as aforesaid.

/s/ WM. BENZ

Subscribed and sworn to before me this 4th day of November, 1952.

[Seal] /s/ RICHARD R. CARNEY,
Notary Public for Oregon.

RESOLUTION ON U. S. BOYCOTT

Whereas, the SS Riviera is owned and operated by Compania Naviera Hidalgo, S.A., a Panamanian corporation, and is being operated from American ports in competition with American-owned ships, and is paying wages of less than one-third the amount which American shippers are paying; and

Whereas Compania Naviera Hidalgo, S. A., a Panamanian corporation, by the use of the SS Riv-

iera and other ships is taking away business from American-operated ships, and will, if it continues to operate in world trade under present conditions, destroy our merchant marine; and

Whereas, The Compania Naviera Hidalgo, S.A., a Panamanian corporation, purchased the SS Riviera, an American built Liberty ship which was constructed by the Maritime Commission at Richmond, California, in 1943, and launched as the SS John Palmer, and registered the ship under the laws of the Republic of Liberia, and

Whereas, this ship signed on a crew of German, Danish and English nationals who were commanded by an English Master who was a native of Scotland, and the crew signed British Articles which required their services aboard the vessel for a period of two years from March, 1952; and

Whereas this ship came into the port of Portland, Oregon, September 3, 1952, for the purpose of taking on a cargo of grain for carriage to India paid for by the US Government under its policy of aid to Asiatic countries; and

Whereas this ship was in an unseaworthy condition because the life boats were rotten, rusty and the life boat gear was corroded and boats could not be launched or used in case of an emergency, and the fire-fighting equipment was defective and out of order, and the food and provisions provided aboard the vessel were rotten, moldy and maggot-infested and unfit for human consumption when the vessel came into the Port of Portland, and the meat provided aboard the vessel was boot-legged

and diseased water buffalo which had been taken on board the vessel during the night while the vessel was at Bombay, India, and the ship was so undermanned that there was no lookout at sea while the vessel was going from Bombay to Japan to Portland, and was a danger to all vessels sailing nearby, and the crew's quarters, messroom and ship's hospital were vermin-ridden with lice, bedbugs and cockroaches, and the members of the crew were not furnished with equipment or gear to clean and fumigate their living quarters; and

Whereas because of the terrible condition existing on this ship the crew would not take the risk of endangering their lives and their health by going to sea, and one of the members of the crew actually committed suicide while the vessel was alongside the dock because he preferred a quick death to a slow suffering death which he felt would be his fate if he stayed aboard the vessel; and

Whereas the members of the crew came to the SUP hall in Portland, Oregon, and asked the Sailors' Union of the Pacific to help correct the terrible conditions on this ship and signed pledge cards authorizing the Sailors' Union of the Pacific to negotiate with the owners for their future employment on the conditions on the ship; and

Whereas the Compania Naviera Hidalgo, S. A., a Panamanian corporation, filed a libel in the Federal Court at Portland, Oregon, and obtained an order from the United States Judge which required the crew to leave the vessel; and

Whereas the Immigration authorities immedi-

ately put the crew in jail and have tried in various ways to intimidate the crew while they were in jail by threatening reprisals upon them when they were deported to Germany; and

Whereas, the crew has remained steadfast in their loyalty to the Sailors' Union of the Pacific and have refused to yield to the pressure that has been put upon them by the company, the German Consul and the local Immigration authorities who have been working in collusion with the company against the crew; and

Whereas this company because of the conditions that existed on board the SS Riviera and the way it has treated the crew of the SS Riviera, and the low wage rate which it is paying on other ships operated by it, is unfair to the Sailors' Union of the Pacific and other legitimate seamen's unions all over the world;

Now Therefore Be It Resolved, That the Sailors' Union of the Pacific goes on record declaring the Compania Naviera Hidalgo, S. A., a Panamanian corporation, unfair to organized labor and American seamen, and that full publicity be given to the said conditions under which this company is operating ships in all American ports where its ships may dock, and that picketing and other means be used to give full publicity to this dispute; and

Be It Further Resolved That all affiliates of the Sailors' Union of the Pacific be asked to take action against this company by picketing and other means

to give full publicity to the conditions under which this company is operating its ships; and

Be It Further Resolved that a copy of this resolution, immediately upon adoption by the Sailors' Union of the Pacific, be given to all affiliated unions in the Seafarers' International.

SAILORS UNION OF THE PACIFIC
/s/ HARRY LUNDEBERG,
Sec. Treas.
/s/ WM. BENZ,
Agent, Portland Branch."

PRE-TRIAL EXHIBIT No. 15

[Title of District Court and Cause No. 6652.]

LIBEL IN ADMIRALTY (IN REM)

To the Honorable Judges of the District Court of the United States for the District of Oregon, In Admiralty Sitting:

The libel of H. Berg, M. Klunker, W. Wilhelm, J. Peterson, F. Minder, A. Abeysirtwardena, H. Koester, P. Check, A. Baardman, W. Kapels, W. Minschewsky, H. Mahnkopf, A. Dziosa, H. Fenski, N. Pedersen, H. Hobeck, R. Elschner, R. Symonds, H. Diessel, R. Goldsmith, R. Davies, R. Fulhause, E. Nohr and F. Kaiser, members of the crew of the S. S. Riviera, her engines, tackle and gear, respectfully shows on information and belief:

Article I.

That at the time of serving and filing this libel the SS Riviera Was, and now is, and during the currency of process herein will be, at or near the Port of Portland, and within the jurisdiction of this Honorable Court.

Article II.

That during all of the times herein mentioned the owner of said vessel, Compania Naviera Hidalgo, S. A., was, and now is, a corporation, company or concern of the Republic of Panama, and that at all times herein mentioned the SS Riviera was registered under the flag of Liberia.

Article III.

That said libelants signed articles and became members of the crew of said vessel and were employed aboard said vessel at the special instance and request of said owner in various capacities at various ports as follows:

H. Berg, 1st Asst. Engineer, Bremen, Germany, Mar. 20, 1952.

M. Klunker, 2nd Asst. Engineer, Bremen, Germany, March 20, 1952.

W. Wilhelm, 3rd Asst. Engineer, Bremen, Germany, March 20, 1952.

J. Peterson, Chief Cook, New Orleans, La., April 14, 1952.

F. Minder, Able Seaman, Bremen, Germany, March 20, 1952.

A. Abeysirtwardena, Galley Boy, Bombay, India, May, 1952.

H. Koester, Asst. Steward, Bremen, Germany, March 20, 1952.

P. Cheek, Asst. Steward, Bremen, Germany, March 20, 1952.

A. Baardman, Mess Boy, Bombay, India, June 3, 1952.

W. Kapels, Oiler, Bremen, Germany, March 20, 1952.

W. Minschewsky, Fireman, Yokohama, Japan, August 13, 1952.

H. Mahnkopf, Oiler, Bremen, Germany, March 20, 1952.

A. Dziosa, Fireman—water tender, Bremen, Germany, March 20, 1952.

H. Fenski, Bremen, Germany, March 20, 1952.

N. Pedersen, Bosun, Bremen, Germany, March 20, 1952.

H. Hobeck, Carpenter, Bremen, Germany, March 20, 1952.

R. Elschner, Able Seaman, Bremen, Germany, March 20, 1952.

R. Symonds, Ordinary Seaman, Japan (Yokohama), August 13, 1952.

H. Diessel, Able Seaman, Bremen, Germany, March 20, 1952.

R. Goldsmith, Able Seaman, Yokohama, Japan, August, 1952.

R. Davies, Ordinary Seaman, Yokohama, Japan, August, 1952.

R. Fulhause, Able Seaman, Bremen, Germany, March 20, 1952.

E. Nohr, Ordinary seaman, Bremen, Germany, March 20, 1952.

F. Kaiser, Oiler, Bremen, Germany, March 20, 1952.

* * * * *

Article XXVIII.

That said demand for wages due said libelants was made of the master of the vessel on September 9, 1952, upon said breach of articles and discharge of the libelants; that at said time said vessel was in an American port, to-wit: Portland, Oregon, and said master wilfully failed and refused to pay said wages, although due demand was made by libelants therefor; that there is also due these libelants two days' wages for each day since September 9, 1952, on account of said wages being withheld without sufficient cause by respondent; that said libelants will be entitled to said double wages until all of the aforesaid wages are paid, which probably will be at least six months from this date; that there will be due libelants additional double wages in the following amounts:

Name	Rate Per Mo.	Amount
H. Berg	$171.00	$2,052.00
M. Klunker	120.00	1,440.00
W. Wilhelm	110.00	1,320.00
J. Peterson	100.00	1,200.00
F. Minder	68.00	816.00
A. Abeysirtwardena	30.00	360.00
H. Koester	75.00	900.00
P. Check	75.00	900.00
A. Baardman	28.00	336.00

Name	Rate Per Mo.	Amount
W. Kapels	$88.00	$1,056.00
W. Minschewsky	70.00	840.00
H. Mahnkopf	88.00	1,056.00
A. Dziosa	68.00	816.00
H. Fenski	88.00	1,056.00
N. Pedersen	90.00	1,080.00
H. Hobeck	80.00	960.00
R. Elschner	68.00	816.00
R. Symonds	50.00	600.00
H. Diessel	80.00	960.00
R. Goldsmith	80.00	960.00
R. Davies	80.00	960.00
R. Fulhause	80.00	960.00
E. Nohr	45.00	540.00
F. Kaiser	88.00	1,056.00

That the total amount of the double wages due all of the libelants is the sum of $23,040.00.

Article XXIX.

That libelants, and each of them, have a maritime lien on said vessel for said sums, and seek relief of this Honorable Court to secure payment of the moneys aforesaid due to them, and show that proper demand was made by libelants for the payment of said wages and transportation money aforesaid.

Article XXX.

That libelants are citizens and nationals of Germany, except J. Peterson, who is a national of Denmark, and R. Symonds, R. Davies and R. Goldsmith, who are nationals of Great Britain, A. Abey-

sirtwardena, who is a native of Ceylon, and A. Baardman who is a native of The Netherlands.

Article XXXI.

That the laws applicable to this case, among others, are 46 U.S.C.A. Sections 596, 597, and Title IX, Liberian Maritime Code, as amended December 22, 1949, which provides as follows:

"Substantive Provision. In so far as it does not conflict with any other provision of this Act, the nonstatutory general Maritime Law of the United States of America is hereby declared to be and is hereby adopted as the general Maritime Law of the Republic of Liberia."

Article XXXII.

That all and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and this Honorable Court.

Wherefore libelants pray that process according to the course of this Honorable Court in a cause of admiralty and maritime jurisdiction may issue against the respondent vessel, SS Riveria, her engines, tackle and gear, and that all persons claiming an interest in said vessel may be cited to appear and answer all and singular the matters aforesaid; that this Honorable Court may be pleased to decree the payment of said separate sums to libelants, together with such sum as the court may deem reasonable as attorney's fees herein, and that the respondent vessel, SS Riviera, may be condemned and sold to pay the same, and that libelants shall have such

other and further relief in the premises as in law and justice they may be entitled to receive.

/s/ K. C. TANNER
/s/ RICHARD R. CARNEY
Proctors for Libelants, P. O. Address: 1041 Pacific Bldg., Portland 4, Oregon.

State of Oregon,
County of Multnomah—ss.

I, F. Kaiser, being first duly sworn, upon oath depose and say: That I am one of the libelants in the foregoing cause; that the foregoing facts within my personal knowledge are true as I verily believe, and as to the matters of fact not within my personal knowledge, I verify that they are true upon information and belief.

/s/ F. W. KAISER

Subscribed and sworn to before me this 3rd day of October, 1952.

[Seal] /s/ RICHARD R. CARNEY,
Notary Public for Oregon.

[Endorsed]: Filed October 3, 1952.

PRE-TRIAL EXHIBIT No. 16

[Title of District Court and Cause No. 6652.]

ANSWER TO LIBEL IN REM

To the Honorable Judges of the above entitled Court in admiralty sitting:

For answer to the libel claimant admits, denies and alleges as follows:

I.

Admits the allegations of Articles I, II and III of the libel.

II.

Denies the allegations of Articles IV through XXVII, both inclusive, except admits that the following amounts were earned and are unpaid wages and overtime of each of the libelants, as indicated:

H. Berg, 2nd Engineer,	$170.69
M. Klunker, 3rd Engineer	267.21
W. Wilhelm, 4th Engineer	164.45
N. Pedersen, bos'n	65.33
H. Hobeck, A.B.	155.08
H. Diessel, A.B.	118.95
H. Elschner, A.B.	96.96
R. Goldsmith, A.B.	51.06
R. Davies, A.B.	127.33
R. Fullhase, A.B.	68.68
R. Symonds, O.S.	31.40
E. Nehr, O.S.	65.38
F. Kaiser, D/G	110.60
H. Mahnkopf, D/G	147.35
W. Kapels, D/G	82.11

H. Fenski, D/G	$118.51
W. Nimschewsky, F.W.T.	.24
A. Dziesa, F.W.T.	94.79
J. Petersen, Ship's cook	131.79
H. Keester, Asst. Stwd.	362.87
P. Check, Asst. Stwd.	93.52
A. Baardman, Cabin Boy	27.92
A. Abeysiriwardena, Galley Boy	14.52
E. Minder, 2nd Cook	141.89

III.

Denies the allegations of the second Article XXVII of the libel, and each and all of them, except admits that on September 9, 1952, some of the libelants demanded of the master of respondent vessel their wages then earned and unpaid, together with repatriation to their respective places of shipment, or to the place designated in their Articles, for delivery, at the conclusion of their term, and that the master refused to pay the same and refused to pay any part thereof so long as the men refused to obey his commands.

IV.

Denies the allegations of Articles XXVIII and XXIX.

V.

Admits the allegations of Article XXX.

VI.

Admits the allegations of Article XXXI, except denies that 46 USC §§596 and 597 are applicable to this libel.

VII.

Denies Article XXXII of the libel.

For a second and further answer and defense to the libel in rem, claimant alleges as follows:

I.

Libelants, at various times and in various ports on and after March 20, 1952, signed Articles as member of the crew of the respondent vessel SS Riviera for a voyage of two years.

II.

Respondent vessel arrived at the port of Portland on or about September 3, 1952, to make voyage repairs and take on supplies and provisions and a cargo of grain for India.

III.

For the purpose of making said repairs respondent vessel, was berthed at the outfitting dock at Swan Island at the Port of Portland adjacent to an American ship, the SS Cotton State.

IV.

On September 7, 1952, a man boarded respondent vessel, identified himself to its master as a delegate of the Seamen's Union and a member of the crew of said SS Cotton State, and asked to discuss with the master wages and conditions on respondent vessel.

V.

About 3:00 a.m. September 8, 1952, a number of men, including the said self-identified delegate of the Seamen's Union, boarded respondent vessel,

awakened members of the crew, and after discussion with them approached the master of respondent vessel and demanded that he come to the crew's messroom and bargain with them concerning wages and conditions on the ship.

VI.

On September 9, 1952, a number of libelants, represented by libelant Mahnkopf, informed the master that they were on strike and demanded that they be paid off and repatriated.

VII.

On September 10, 1952, a number of men, including the self-identified Seamen's Union delegate referred to in Article IV hereof, boarded respondent vessel and circulated copies of a leaflet, designed and intended to cause libelants to mutiny and desert the vessel, and also circulated cards for the members of the crew of respondent vessel to sign, designating the Sailor's Union of the Pacific as their bargaining agent for collective bargaining.

VIII.

All of libelants signed said cards on September 10, 1952, save and except H. Berg, who signed such a card on September 11, 1952.

IX.

As a result of the said acts of the representatives of the Sailor's Union of the Pacific, which acts were in violation of O.C.L.A. §105-1001 and 105-1005, and

which acts were done for the express purpose of inducing libelants to violate their Articles, libelants deserted the service of respondent vessel on or about September 9, 1952, and thereafter refused to obey the lawful commands of the master and refused to leave respondent vessel until ordered to do so by this Court on September 26, 1952.

X.

All and singular the premises are true and within the admiralty jurisdiction of this Court.

Wherefore, claimant prays that the libel be dismissed and that a decree be entered forfeiting any wages earned by ibelants but unpaid, that libelants recover nothing, and for such other and further relief as in the premises and in law and justice it may be entitled to receive.

WOOD, MATTHIESSEN, WOOD & TATUM,
/s/ JOHN D. MOSSER,
/s/ KRAUSE & EVANS,
Proctors for Claimant and Respondent.

State of Oregon,
County of Multnomah—ss.

I, T. Cowden, being first duly sworn, say that I am Master of the SS Riviera, that I have read the foregoing Answer, and that the same is true as I verily believe.

/s/ THOMAS COWDEN.

Subscribed and sworn to before me this 9th day of October, 1952.

[Seal] /s/ JOHN D. MOSSER,
Notary Public for Oregon.

Acknowledgment of Service attached.

[Endorsed]: Filed Oct. 9, 1952.

PRE-TRIAL EXHIBIT No. 17

[Title of District Court and Cause No. 6652.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The libel of 24 members of the crew of the SS Riviera against that vessel for wages they claimed due them together with transportation to their respective places of shipment or to the places designated in the articles for their delivery at the conclusion of their voyage and for penalties for the willful refusal of the master to pay such wages having been tried before the undersigned judge of the above entitled court together with the cross-libel of claimant against the said crew members for damages caused claimant by the detention of the vessel and by the necessity of transporting new crew members to Portland as a result of libelant's refusal to obey the commands of the Master; and the Court having heard the witnesses and received the other evidence of the parties and having made a personal inspection of the SS Riviera, accompanied by proc-

Pre-Trial Exhibit No. 17—(Continued)

tors for the parties, and particularly having examined the crew's living quarters, life boats, boat launching gear, store rooms, refrigerators, galley, mess rooms, stores, provisions, and steam smothering gear of said vessel; and the Court having heard the arguments of proctors and considered their briefs and now being fully advised, makes the following:

Findings of Fact

1. Libelants are all foreign nationals, the majority of them being German citizens.

2. Claimant is a corporation organized and existing under and by virtue of the laws of the Republic of Panama, and the owner and operator in foreign commerce of the SS Riviera which is registered under the flag of the Republic of Liberia.

3. The SS Riviera arrived at Portland, Oregon, on September 3, 1952, and has ever since been berthed at Swan Island at the Port of Portland. The vessel came to Portland for the purpose of making repairs, taking on supplies and provisions and a cargo of grain for India.

4. The articles of the ship were opened at Bremen, Germany, in March of 1952. Most of the libelants had signed on said articles at that Port on March 20 or 21, 1952. The other libelants had signed at various ports and times thereafter as replacements for men who had deserted or become ill. The articles were of the usual and ordinary form employed on British Flag ships for a foreign going voyage. They contained a statement of the rights

Pre-Trial Exhibit No. 17—(Continued)

and duties of the master and the crew, the wages to be paid, the minimum amount of food to be furnished each member of the crew, and period of which the seamen agreed to serve on board the ship which was "on a voyage from Bremen for a period of two years." The articles also provided that "British Maritime Board conditions shall apply to wages and hours."

5. In addition to signing the articles, the German seamen signed an agreement required by the German Labor Office, printed both in English and in German. In this latter agreement the ship agreed to employ the German seamen for a minimum term of 30 days "or longer, subject to the provisions of the contract." It also provided that "in respect to the employment, the seamen's collective agreement and other relevant national regulations of Great Britain will apply. Consequently, the German seaman will have the same rights as a comparable seaman of Great Britain."

6. At the time they signed the articles, the crew members knew that the Riviera was proceeding to the United States to pick up a cargo of grain to be delivered to India, and that their term of service was two years.

7. No complaints of any kind were made by any member of the crew to the master or any other officer of the vessel, and the master was unaware of any dissatisfaction of its members until on September 7, 1952, he was visited by a member of the crew of the SS Cotton State, an U.S. Flag vessel,

Pre-Trial Exhibit No. 17—(Continued)

docked next to the Riviera at Swan Island. This man demanded discussion of the wages and the working conditions of the men on the Riviera, which the master refused. The master was again contacted at 3:00 a.m. on September 8, 1952, by the same man and by other members of the crews of the Cotton State and the SS. Riviera, who stated that they wanted to talk to him about wages and conditions. This, the master again refused to do.

8. On September 9th a document signed by a number of the libelants was delivered to the master. It read as follows:

> "Because we have been shanghait in Bremen for two years agreement.
>
> All what the captain promised in the past is not realised and so we want our pay-off and home voiage.
>
> Crew off the S/S Riviera."

9. On that day, or on the following day, members of the crew were in contact with officials of the Sailors Union of the Pacific, who gave the crew members a mimeographed statement concerning the successful negotiation by the Sailors Union of a contract for foreign seamen with their ship, "The Makiki," an Italian ship registered under the Panamanian flag. The statement explained that, in the name of the International Transport Federation, an international labor organization with which the SUP is affiliated, they placed a picket line in front of the vessel; that the metal workers and the tow-

Pre-Trial Exhibit No. 17—(Continued)

boat men respected the picket line and "consequently the ship was deader than a mackeral." As a result the SUP, so the statement continues, negotiated a contract which gave the crew members better working conditions and new wage rates. The old and new wage rates for each classification were set forth in the statement and they show increases averaging more than 150%.

10. When the members of the crew persisted in their refusal to work or to obey the orders of the master, he discharged them and ordered them off the vessel. Libelants refused to obey that order and held the possession of the vessel against its lawful owner until September 26, 1952. During this period they maintained a picket line at the gangway to the ship, and by the presence of that picket line and of themselves aboard the vessel pursuaded and discouraged workers of independent contractors, who had been sent to the ship, from making repairs which had been ordered by claimant.

11. On September 26, 1952, libelants herein left the SS Riviera pursuant to a decree of this court entered in a possessory libel suit brought by claimant herein after the refusal of the men to continue work or to leave the vessel.

12. Claimant has fulfilled all of its obligations under the articles and contracts for the employment of libelants.

13. With regard to food, on past trips the same food was served to officers as to other members of the crew, it was fit for human consumption, no one

Pre-Trial Exhibit No. 17—(Continued)

became ill at any time from eating it, and in quantity it was at all times in excess of that required by the adequate minimum requirements in the articles. Port stores taken aboard at Portland between September 3rd and 9th were ample for that period and of the same quality generally served aboard U.S. flag ships and of a higher quality than usually served aboard tramp steamers operating under foreign flags. Voyage stores ordered prior to September 9, 1952, were adequate in quantity for the proposed voyage to India and were of the same quality generally used on U.S. flag vessels and of a higher quality than generally used on foreign flag tramp steamers similar to the SS Riviera. Further provisions were to be taken aboard the vessel at Singapore, where ample supplies of good quality are available. No complaints had been made to the master during the time the vessel was at Portland, about the quality of the food then being served, and no inquiry had been made by any of libelants as to what supplies had been ordered for the coming voyage.

14. Wages earned by libelants have been paid when due, upon demand. At the request of libelants, some of them have been advanced money against overtime earnings, which, by the terms of the articles, are not due until the end of the voyage. On September 9, 1952, libelants had earned, but not been paid, wages including overtime and other extras, in the following amounts:

Pre-Trial Exhibit No. 17—(Continued)

H. Berg, 2nd Engineer	$171.30
M. Klunker, 3rd Engineer	271.11
W. Wilhelm, 4th Engineer	165.03
N. Pedersen, Bos'n	133.56
H. Hobeck, A.B.	155.63
H. Diessel, A.B.	119.37
H. Elschner, A.B.	87.03
R. Goldsmith, A.B.	51.18
R. Davies, A.B.	127.78
R. Fullhase, A.B.	68.79
R. Symonds, O.S.	31.63
E. Nohr, O.S.	65.61
F. Kaiser, D/G	110.99
H. Mahnkopf, D/G	147.87
W. Kapels, D/G	80.11
H. Fenski, D/G	116.64
W. Nimschewsky, F.W.T.	.24
A. Dziesa, F.W.T.	108.75
J. Petersen, Ship's Cook	123.96
H. Koester, Asst. Stwd.	364.17
P. Check, Asst. Stwd.	93.86
A. Boardman, Cabin Boy	28.02
A. Abeysiriwardena, Galley Boy	14.51
F. Minder, 2nd Cook	142.47
Total	$2,779.60

No demand was made for payment of these wages other than that on September 9, 1952 libelants demanded that they be paid off and repatriated. This was refused by the master, and the amounts

Pre-Trial Exhibit No. 17—(Continued)

earned by libelants as set forth herein above, are still unpaid.

15. Prior to the arrival of the vessel at Portland, claimant had requested the American Bureau of Shipping to carry out and complete its Special Survey No. 2, which is a rigorous survey of the seaworthiness of the vessel, required at eight year intervals by the underwriters if it is to maintain its classification and be entitled to insurance. Also, prior to the arrival of the vessel at Portland, claimant had employed the Albina Engine and Machine Works to carry out any repairs shown needed by the American Bureau of Shipping survey and such other repairs as might be ordered by the master or claimant's other agents. Such repairs were being made until interrupted by the strike of the crew members. Prior to going on strike, none of libelants had inquired of the master or other officers of the vessel what repair had been ordered; nor had any of them requested that any repairs be made prior to the sailing of the vessel. The vessel, and particularly its fire fighting equipment and lifeboats, were seaworthy on September 9, 1952 save in those respects as to which repairs had been ordered and would have been made prior to its sailing.

16. The living quarters of libelants on the SS Riviera are fit for habitation and were on September 9, 1952.

17. At all times from the opening of the articles to the strike on September 9, 1952, the vessel had a sufficient deck and engine crew to man the vessel.

Pre-Trial Exhibit No. 17—(Continued)

18. The sole purposes of the picketing and striking action taken by libelants on and after September 9, 1952 were to compel claimant to change the terms and conditions of the articles and agreements of employment and to require claimant to employ libelants for a different period than that stated in the articles and at wage rates and other conditions different than those stated in the articles.

19. That the Articles of Agreement signed by said libelants provided for their return to their respective ports of engagement and to other ports upon termination of said articles; that the reasonable value of transportation from Portland, Oregon to Bremen, Germany, is $600.00; that the reasonable value of transportation from Portland, Oregon, to London, England, is $600.00; that the reasonable value of transportation from Portland, Oregon, to Amsterdam, Holland, is $600.00 and the reasonable value of transportation from Portland, Oregon, to New Orleans, Louisiana, is $200.00.

Whereupon, the Court makes the following conclusions of law:

1. The Court, by exercise of its discretion, has jurisdiction of the parties and the subject matter of these libels.

2. Both the libel herein and cross-libel herein are to be determined by the general non-statutory maritime law of the United States of America.

3. All wages to be paid and the terms and conditions of employment of libelants of the Steamship

Pre-Trial Exhibit No. 17—(Continued)

Riviera are settled and fixed by the ship's articles, which at all times since their signing have been and are in full force and effect.

4. Claimant has performed all of its obligations and complied with all the conditions of said articles and agreements, and had not breached the same by any unseaworthiness of the vessel on September 9, 1952.

5. Even of there were any unseaworthiness of the vessel for its proposed voyage to India on September 9, 1952, libelants were premature in demanding to be paid off and repatriated for that cause on that date since the vessel was still under repair and receiving stores for the proposed voyage.

6. That on September 9, 1952, the libelants deserted said vessel and refused further to carry out the lawful orders of the master; that on account of said desertion the libelants forfeited such part of their wages as to the Court may seem just in the premises.

7. That libelant ought not to suffer any forfeiture of wages earned and unpaid as of September 9, 1952 because such desertion was at the instigation of American seamen on the promise of higher wages and a shorter period of articles; that libelants and each of them have a maritime lien on said vessel for wages earned and unpaid September 9, 1952 in the amounts set forth hereinabove in Finding of Fact No. 14.

8. That a decree ought to issue out of this court decreeing said sums for wages to the libelants and

Pre-Trial Exhibit No. 17—(Continued)

that the respondent vessel, SS Riviera, her boilers, tackle and apparel should be condemned and sold to pay the same.

9. That the cross-libelant is not entitled to have and recover damages and forfeitures, or either of them, against the cross-respondents on account of the matters and things alleged in its first and second causes of suit in its cross-libel, or at all.

Each party shall bear his or its own costs.

Dated in open court December 11th, 1952.

/s/ GUS J. SOLOMON,
Judge.

[Endorsed]: Filed Dec. 11, 1952.

PRE-TRIAL EXHIBIT No. 18

[Title of District Court and Cause No. 6652.]

FINAL DECREE

The libel of 24 members of the crew of the SS Riviera against that vessel for wages they claimed due them together with transportation to their respective places of shipment or to the places designated in the articles for their delivery at the conclusion of their voyage and for penalties for the willful refusal of the master to pay such wages having been tried before the undersigned Judge of the above entitled court together with the cross-libel of claimant against the said crew members for damages caused claimant by the detention of

the vessel and by the necessity of transporting new crew members to Portland as a result of libelant's refusal to obey the commands of the Master; and the Court having heard the witnesses and received the other evidence of the parties and having made a personal inspection of the SS Riviera, accompanied by proctors for the parties, and particularly having examined the crew's living quarters, life boats, boat launching gear, store rooms, refrigerators, galley, mess rooms, stores, provisions, and steam smothering gear of said vessel; and the Court having heard the arguments of proctors and considered their briefs and now being fully advised,

It Is Hereby Ordered, Adjudged and Decreed that libelants recover of and from respondent, individually, the following sums:

H. Berg, 2nd Engineer	$171.30
M. Klunker, 3rd Engineer	271.11
W. Wilhelm, 4th Engineer	165.03
N. Pedersen, Bos'n	$133.56
H. Hobeck, A. B.	155.63
H. Diessel, A. B.	119.37
H. Elschner, A. B.	87.03
R. Goldsmith, A. B.	51.18
R. Davies, A. B.	127.78
R. Fullhase, A. B.	68.79
R. Symonds, O. S.	31.63
E. Nohr, O. S.	65.61
F. Kaiser, D/G	110.99
H. Mahnkopf, D/G	147.87
W. Kapels, D/G	80.11

H. Fenski	$116.64
W. Nimschewsky, F.W.T.	.24
A. Dziesa, F.W.T.	108.75
J. Petersen, Ship's Cook	123.96
H. Koester, Asst. Stwd.	364.17
P. Check, Asst. Stwd.	93.86
A. Boardman, Cabin Boy	28.02
A. Abeysiriwardena, Galley Boy	14.51
F. Minder, 2nd Cook	142.47
Total	$2,779.60

And It Is Hereby Ordered Adjudged and Decreed that if the amounts hereinabove set out are paid into the registry of this Court within twenty-four hours, this decree shall be fully satisfied, and the SS Riviera, her engines, tackle and gear, shall be discharged and released from the claims of libelants herein, but that if the amounts hereinabove decreed due libelants are not so paid, then the SS Riviera, her engines, tackle and gear, shall be condemned and sold to satisfy the decree, in accordance with the Admiralty practice of this Court.

Dated this 11th day of December, 1952.

/s/ GUS J. SOLOMON,
Judge.

[Endorsed]: Filed December 11, 1952.

PRE-TRIAL EXHIBIT No. 19

[Title of District Court and Cause No. 6661.]

LIBEL IN PERSONAM

To: The Honorable Judges of the Above Entitled Court, in Admiralty Sitting.

Comes now Compania Naviera Hidalgo, S. A., and for its cause of suit alleges as follows:

I.

Compania Naviera Hidalgo, S. A., was at all times herein mentioned and is now a corporation of the Republic of Panama and the owner and operator of the vessel SS Riviera, registered under the flag of Liberia and now and at all times herein mentioned at the Port of Portland and within the jurisdiction of this Honorable Court.

II.

The respondent Sailors' Union of the Pacific is an organization but not incorporated, having a president, secretary, port agent and a patrolman, and having rules and regulations by virtue of which members thereof act as an organized body as represented by said principal officers, the acts of said officers being agreed to be the act of each individual member of such union. The president and secretary of said respondent union are residents of the State of California. The respondent William Benz is the Port Agent of said respondent union, and respondent Robert Williams is the Patrolman of said respondent union, and said respondent Ed Cochrane

is a member of said union. The respondents First Doe to and including Tenth Doe are members and/or agents of the respondent Sailors' Union of the Pacific, whose true names are unknown to libelant, who acted for respondent Sailors' Union of the Pacific in inciting and inducing twenty-five members of the crew of the SS Riviera to mutiny, desert and go on a sit-down strike as hereinafter alleged. Libelant will substitute the true names of said respondents as and when libelant ascertains them.

III.

Said vessel arrived at the Port of Portland on or about September 3, 1952, to make repairs and take on supplies and provisions and to load a cargo of grain for carriage to India pursuant to a charter previously entered into by libelant. For the purpose of making said repairs said vessel was berthed at the outfitting dock at Swan Island at the Port of Portland adjacent to an American ship, the SS Cotton State.

IV.

On September 7, 1952, respondent Ed Cochrane boarded said vessel, identified himself to its master as a delegate of the Sailors' Union of the Pacific and a member of the crew of the SS Cotton State and asked to discuss with the master wages and conditions on said vessel.

V.

About three a.m., September 8, 1952, respondent Ed Cochrane and a number of respondents Doe

boarded said vessel, awakened the members of the crew and after discussion with them approached the master of said vessel and demanded that he come to the crew's messroom and bargain with them concerning wages and conditions on the ship. Said respondents encouraged the members of the crew to strike and to refuse to obey the commands of the master and to violate the Articles of the vessel by which members of the crew had at various times and at various points on and after March 20, 1952 joined said vessel for a voyage of two years.

VI.

On September 10, 1952, respondent Cochrane and a number of respondents Doe boarded said vessel and circulated copies of a leaflet designed and intended to cause the members of the crew to mutiny and desert and also circulated cards for the members of the crew to sign designating the Sailors' Union of the Pacific as their bargaining agent for collective bargaining.

VII.

As a result of the said acts of respondents, committed in violation of O.C.L.A. §§105-1001 and 105-1005, and which acts were done with the express purpose of inducing the members of the crew to violate their Articles, about twenty members of the crew deserted the service of the said vessel on or about September 9, 1952, and another five members of the crew deserted the service of said vessel on or about September 10, 1952, all of them thereafter

refusing to obey the lawful commands of the master and unlawfully taking possession of said vessel and holding possession until ordered to leave the vessel on September 26, 1952, by decree of this court.

VIII.

As a result of the said acts of respondents and the consequent desertions of said members of the crew, libelant will be forced to replace them with other seamen who must be transported to the vessel at an expense of Twenty Thousand Dollars ($20,000.00) and will also suffer further damages in the amount of Ten Thousand Dollars ($10,000.00) from the expenses and loss of profits during the period reasonably required to transport said replacements to the vessel.

IX.

As a result of the said acts of respondent and the consequent unlawful seizure and holding of possession of said vessel by the said members of its crew, libelant was unable to use its ship for the period from September 9, 1952, to and including September 26, 1952, during which period it incurred expenses in maintaining said ship and the loyal members of its crew and loss of profits in the amount of $20,000.00. All and singular the premises are true and within the admiralty jurisdiction of this Honorable Court.

Wherefore, libelant prays that process in due form of law according to the practice of this Court in admiralty jurisdiction may issue against the

respondents and each and all of them, that a decree be entered awarding libelant damages in the amount of Fifty Thousand Dollars ($50,000.00), of and from respondents and each and all of them and for such other and further relief as in the premises and law and justice it may be entitled to receive.

WOOD, MATTHIESSEN, WOOD & TATUM,
/s/ KRAUSE & EVANS,
/s/ JOHN D. MOSSER,
Proctors for Libelant.

State of Oregon,
County of Multnomah--ss.

I, T. Cowden, being first duly sworn, say that I am master of the SS Riviera and an agent of libelant in the above entitled cause; that I am familiar with the contents of the within Libel in Personam and that the allegations therein contained are true, as I verily believe.

/s/ THOMAS COWDEN

Subscribed and sworn to before me this 9th day of October, 1952.

[Seal] /s/ JOHN D. MOSSER
Notary Public for Oregon.

[Endorsed]: Filed October 9, 1952.

PRE-TRIAL EXHIBIT No. 20

[Title of District Court and Cause No. 6661.]

ANSWER TO LIBEL IN PERSONAM

To the Honorable Judges of the Above Entitled Court in Admiralty Sitting:

Come now the respondents above named and for answer to Libelant's libel in Personam, admit, deny and allege as follows:

I.

Admit paragraph I, and the whole thereof.

II.

Answering paragraph II respondents admit that the Sailors' Union of the Pacific is an organization, but not incorporated, and further admit that it has a president, secretary, port agent and patrolman, and admit that it has rules and regulations, and further admit that the president and secretary of the Sailors' Union of the Pacific are residents of the State of California, and further admit that William Benz is the port agent of the Sailors' Union of the Pacific at Portland, Oregon, and that Robert Williams is the patrolman of said union at Portland, Oregon, but deny each and every other allegation, matter and thing contained in said paragraph, and the whole thereof.

III.

Answering paragraph III of said Libel respondents admit that the SS Riviera arrived at the Port of Portland, Oregon, on or about September 3, 1952,

to take on a cargo of grain for carriage to India, and that said vessel was berthed at the out-fitting dock at Swan Island at the Port of Portland near the SS Cotton State.

IV.

Answering paragraphs IV, V, VI, VII, VIII and IX of libelant's Libel in Personam, respondents deny each and every allegation, matter and thing therein contained, and the whole thereof.

Wherefore having fully answered libelant's Libel in Personam, respondents pray that said Libel be dismissed, and that said libelant take nothing, and that respondents recover their costs and disbursements herein, and for such other and further relief as in the premises and law they may be entitled to receive.

/s/ K. C. TANNER,
/s/ RICHARD R. CARNEY
Proctors for Respondents.

Acknowledgment of Service attached.

[Endorsed]: Filed October 16, 1952.

PRE-TRIAL EXHIBIT No. 21

[Title of District Court and Cause No. 6661.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above cause having come on regularly for trial before the court, sitting in Admiralty, upon the libel of Compania Naviera Hidalgo, S. A., filed

herein against the Sailors' Union of the Pacific, and others, the libelant appearing by its proctors, Gunther F. Krause and John D. Mosser, and the respondents being represented by their proctors, K. C. Tanner and Richard R. Carney, and the court having reserved ruling upon the exceptions to the libel filed by the respondents, and testimony having been offered and received in support of the libel and the answer of the respondents to said libel, and the cause having been submitted and argued to the court, and the court being of the opinion that the cause should be decided on its merits and upon the testimony produced at the trial, and that the exceptions to the libel should be overruled, and the court having heretofore and on the 22nd day of October, 1952, made and filed its Oral Opinion herein, and having decided that the respondents are entitled to a decree in their favor.

Now Therefore, pursuant to the rules in such cases made and provided, the court now makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I.

Compania Naviera Hidalgo, S. A., was at all times mentioned in the libel, and now is, a corporation of the Republic of Panama, and the owner and operator of the vessel SS Riviera registered under the flag of Liberia and now and at all times mentioned in the libel was at the Port of Portland, within the jurisdiction of this Honorable Court.

II.

Respondent Sailors' Union of the Pacific is a voluntary association, but not incorporated, having a secretary-treasurer, port agent and a patrolman. The secretary-treasurer of said respondent union is a resident of the State of California; respondent William Benz is the port agent of said respondent union at Portland, Oregon, and the respondent Robert Williams is the patrolman of said respondent union at Portland, Oregon.

III.

That the respondent Ed Cochrane is not a member of the respondent Sailors' Union of the Pacific, which is affiliated with the AFL, but is a member of the National Maritime Union which is affiliated with the CIO. That the respondent Ed Cochrane neither was, nor now is, an agent of the Sailors' Union of the Pacific, nor has he, nor is he now, acting for the Sailors' Union of the Pacific in any capacity.

IV.

The SS Riviera arrived at the Port of Portland, Oregon, on or about September 3, 1952, to make repairs and take on supplies and provisions and to load a cargo of grain for a voyage to India, pursuant to a charter previously entered into by libelant; that said vessel was moored at Swan Island, at the Port of Portland, Oregon, adjacent to an American flag vessel, the SS Cotton State.

V.

That on September 8, 1952, at about 3 a.m., certain persons boarded the SS Riviera and requested the master to discuss wages and working conditions on the vessel; that none of said persons were the respondents nor persons acting as their agents or in their behalf.

VI.

That on or about September 9, 1952, the members of the crew of the SS Riviera ceased work on said vessel, but remained aboard said vessel until September 26, 1952, when said crew removed themselves from the vessel pursuant to an order of this court.

Conclusions of Law.

From the foregoing Findings of Fact the court concludes that the respondents above named did not wrongfully induce the members of the crew of the SS Riviera to breach their articles of agreement with libelant, and to strike, and to refuse to obey the commands of the master of the vessel: that this libel against the Sailors' Union of the Pacific and the three individuals above named should be dismissed.

Done and dated in open court at Portland, Oregon, December 6, 1952.

/s/ GUS J. SOLOMON,
Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed December 6, 1952.

PRE-TRIAL EXHIBIT No. 22

[Title of District Court and Cause No. 6661.]

DECREE

The above entitled cause having come on for trial before the court sitting in Admiralty, upon the libel of Compania Naviera Hidalgo, S.A., against the Sailors' Union of the Pacific and others, respondents, libelant being represented by its proctors, Gunther F. Krause and John D. Mosser, and respondents being represented by K. C. Tanner and Richard R. Carney, their proctors, and Exceptions to the Libel having been filed by the respondents, and the court having taken said Exceptions under advisement and having later ruled that said Exceptions should be denied, and testimony having been offered and received in support of the Libel and in support of the Answer of the respondents to said Libel, and the matter having been argued and submitted to the court, and the court having heretofore made and filed its Oral Opinion, and having signed its Findings of Fact and Conclusions of Law wherein the court found and concluded that the respondents are entitled to a decree herein.

Now therefore, it is hereby ordered that the Libel filed herein be, and the same hereby is, dismissed.

Dated in open court December 6, 1952.

/s/ GUS J. SOLOMON,
Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed Dec. 6, 1952.

PRE-TRIAL EXHIBIT No. 23

[Title of District Court and Causes 6652 and 6661.]

ORAL OPINION

Twenty-four members of the crew of the SS Riviera filed a libel against the vessel to collect the wages they claim are due them plus an equal amount as penalties for the willful refusal of the Master to pay such wages. They also seek transportation or its money equivalent from Portland, Oregon, to their respective places of shipment or to the places designated in the Articles for delivery at the conclusion of the voyage. Most of the libelants are German nationals and 17 of the 24 libelants signed on the Riviera at Bremen, Germany, and of these a majority had previously served on the vessel. The Riviera is owned by the Compania Naviera Hidalgo, a Panamanian corporation, and is registered under the Liberian flag.

The crew members claim that they are entitled to the amount requested by reason of the fact that, on or about September 9, 1952, while the vessel was in the port of Portland, the Articles and Agreement between the men and the owner were breached by the owner "in that the vessel was unseaworthy, in that the food stuffs supplied for the contemplated voyage were spoiled and unfit for human consumption and insufficient in quality and quantity for the proposed voyage, that the living quarters of the libelants were filthy and vermin-ridden and not fit for habitation for said voyage and in that the

Pre-Trial Exhibit No. 23—(Continued)

fire fighting equipment and hose on said vessel were not in operating condition and in that lifeboats were in disrepair and in that said vessel was not properly and sufficiently manned for the contemplated voyage."

If its answer to the libel, the ship (hereinafter referred to as the respondent) denied the allegations of the libel except that it admitted that the libelants earned as wages and overtime compensation, which was not previously paid to them the sum of $2,708.57.

It asserts, however, that the members of the crew have forfeited all or a portion of their wages and are liable to the respondent in damages in the amount of $50,000 for loss of profits which the ship would have earned and for additional expenses incurred and to be incurred by reason of the failure of the crew to perform their duties and their failure to obey the lawful commands of the Master of the vessel, all in violation of their Articles and Agreements, and by reason of the fact that they unlawfully seized and held possession of the Riviera from September 9 to September 26, 1952, and thus prevented the respondent from continuing to repair the vessel and from loading it with cargo.

In a separate libel filed by the owner, which was consolidated for trial with the libel of the members of the crew, the owner demands damages against the Sailors Union of the Pacific, and 2 officials of such union, claiming that they encouraged and induced the striking members of the crew of the

Pre-Trial Exhibit No. 23—(Continued)

Riviera to violate their Articles in the manner above set forth.

The evidence showed that, although the ship was flying a Liberian flag, the Articles which the crew signed at Bremen, Germany, on March 20, 1952, were British articles. They were the ordinary and usual form of British articles for a foreign-going ship; they contained a statement of the rights and duties of the Master and the crew, the wages to be paid, and the minimum amount of food that the ship must furnish to each member of the crew. The period of time which the seamen agreed to serve on board the ship was "on a voyage from Bremen for a period of 2 years," and the Articles also provided that "British Maritime Board Conditions shall apply to wages and hours."

In addition to signing Articles, the German seamen signed an agreement, required by the German Labor Office, printed both in English and German entitled "Articles of Agreement for German Seamen." In this latter agreement, the ship agreed to employ the German seamen for a term of "Thirty days or longer subject to the provisions of the contract. The employment will commence on the date of the conclusion of the agreement and will terminate on the date of the return of the vessel to port at which the seaman was engaged." The agreement also contained provisions for the protection of German seamen such as the one that reads, "In respect of the employment the seamen's collective agreement and other relevant national regulations of

Pre-Trial Exhibit No. 23—(Continued)

Great Britain will apply. Consequently the German seaman will have the same rights as a comparable seaman of Great Britain."

Although there was some evidence by crew members that they were under the impression that they were signing on for a 30-day trip to the United States and return, in my opinion, the evidence preponderates that, at the time they signed the Articles and the Agreement, they knew that the Riviera was proceeding to the United States to pick up a cargo to be delivered to India, and that the term of their service was 2 years.

The ship was provisioned in Germany with food and other supplies and, immediately after the Articles and Agreement were signed, sailed in ballast to New Orleans. In New Orleans, the American Bureau of Shipping, a classification organization, at the request of the owner, commenced its Special Survey No. 2, which is a thorough survey of the hull, machinery and boilers conducted every 4 years, to determine whether the ship is up to class and is entitled to insurance.

In New Orleans, the Riviera took on a load of wheat for delivery to Bombay. Except for bread, fresh foods, vegetables and eggs, no provisions were taken for such trip. When the Riviera arrived in Bombay, its meat supply was practically exhausted. Therefore, in addition to port supplies, it took on various types of food for the voyage, including 2000 pounds of beef. During the time the cargo of grain was being unloaded, the crew complained to

Pre-Trial Exhibit No. 23—(Continued)

the German Counsul in Bombay that their overtime pay was being withheld. At a conference between the Master and the German Counsel, the Master agreed to make advances against overtime compensation even though, under the rules and regulations governing British ships, overtime compensation is not payable until the end of the voyage.

After leaving Bombay, the Riviera proceeded to Calcutta, where it took on a load of coal. It remained in Calcutta for almost a month and, during that time, 2 men, under the direction of the bo'sun, worked almost every day on the life boats.

From Calcutta, the vessel went to Singapore. On this trip, because of the intense heat, a number of the crew slept on deck using the mattresses from their bunks. At Singapore, the vessel picked up some provisions, primarily mutton and 500 pounds of Australian beef. The purchase of meat was made because, after the vessel had left Bombay, the steward reported to the Master that the crew members had complained about the beef purchased in Bombay and because it was discovered that some of the beef spoiled and had to be thrown overboard.

The cargo of coal was discharged in Japan and the Riviera then proceeded to Portland, Oregon. On this trip, weavils were discovered in some of the boxes of cereal and in a sack of rice. Likewise, on this trip the cook found it necessary to trim much of the beef before it could be used. There was more than the usual amount of complaining about the food on this trip, but practically all of the com-

Pre-Trial Exhibit No. 23—(Continued)

plaints were directed toward the Indian beef. Although a few of these complaints came to the attention of the Master, he did not change his order to use the Indian beef before using the Australian beef. However, the Australian mutton was used.

Upon the arrival of the Riviera at Portland on September 3, a representative of the American Bureau of Shipping came on board and proceeded to complete its Special Survey No. 2 commenced in New Orleans. On the same date, a representative of the Albina Engine & Machine Works came on board to prepare plans and specifications for the repairs required by the American Bureau and for such additional work as was ordered by the Master. From September 3 to September 9, 62 items were ordered repaired, including work on the lifeboats and in the crew's quarters.

A local ship chandler delivered food supplies such as chickens, bread, fruit, vegetables, butter and eggs for use while the ship was in port and provisions for its intended voyage were also being delivered. The Riviera had come to Portland not only to be repaired and to take on provisions and supplies but also to take on a cargo of grain for delivery to India.

No complaints of any kind were made by any member of the crew to the Master or any other officer of the vessel, and the Master was unaware of any dissatisfaction among members of the crew until he was visited by a member of the crew of the SS. Cotton State who wanted to discuss the

Pre-Trial Exhibit No. 23—(Continued)

wages and working conditions of the men on the Riviera. The Master was again contacted at 3 a.m. on the morning of September 8, by this same man, who is a member of the National Maritime Union, and by other members of the crews of the SS Cotton State and the Riviera who stated they wanted to talk to him about wages and conditions. This, the Master refused to do.

On September 9, the document, signed by a number of the members of the crew of the Riviera, was delivered to the Master. It read as follows:

"Because we have been shanghait in Bremen for two years agreement.—

All what the captain promised in the past is not realised and so we want our pay-off and home voiage.

Crew off the S/S Riviera."

The Master ordered them to continue work and, upon their refusal, he discharged them and ordered them off the vessel. On that day, or on the following day, members of the crew were in contact with officials of the Sailors' Union of the Pacific, who gave the crew members a mimeographed statement concerning the successful negotiation by the Sailors Union of a contract for foreign seamen with their ship, "The Makiki," an Italian ship registered under the Panamanian flag. The statement explained that, in the name of the International Transport Federation, an international labor organization with which the SUP is affiliated, they placed a picket line in front of the

Pre-Trial Exhibit No. 23—(Continued)

vessel; that the metal workers and the towboat men respected the picket line and "consequently the ship was deader than a mackerel."

As a result the SUP, so the statement continues, negotiated a contract which gave the crew members better working conditions and new wage rates. The old and new wage rates for each classification were set worth in the statement and they show increases averaging more than 150%.

When the members of the crew of the Riviera refused to work or leave the vessel, respondent filed a possessory libel to obtain possession of the vessel and to order the removal of the seamen off the vessel.

On September 26, 1952, the crew members, libelants herein, pursuant to a decree of this court left the vessel.

This libel, on behalf of such crew members was filed on October 3.

I shall now consider the claims of the Libelants in support of their contention that the Articles and Agreement were breached by the owners of the vessel.

First, libelants contend that "the food stuffs supplied for the contemplated voyage were spoiled and unfit for human consumption and insufficient in quality and quantity for the proposed voyage." In other words, libelants do not claim the Articles and Agreement were breached because they had in the past been served food which was unfit for human consumption and because they had been served an

Pre-Trial Exhibit No. 23—(Continued)

insufficient quantity of proper food, but they justified their conduct on the basis of the failure to provision the vessel with an adequate supply of proper food for the contemplated voyage.

As I have previously pointed out, the vessel was in port for 4 days before any complaints were made and at no time, prior to the time of the strike, was the food situation discussed and the strike statement itself does not make any mention of food. There is no evidence that any member of the crew made any inquiry at any time concerning the quantity or quality of food that was being brought aboard for the intended voyage.

The evidence upon which libelants rely to support their first contention relates to prior trips. It is conceded that the beef purchased in India was lean and not of a good grade and that it is extremely difficult to obtain a good grade of beef in India. It is also conceded that a portion of such beef was unfit for human consumption and that some of the beef was thrown overboard. However, except for 2 members of the crew, whose testimony was improbable and at times fantastic and who were both impeached and contradicted by numerous other witnesses including their own, there was no testimony that any spoiled meat was served to the crew. All of the witnesses testified that the same meat served to the crew was served to the officers and that no one became ill at any time from the food. The cook, who testified that spoiled meat was served, admitted that he ate the meat himself, and Reverend

Pre-Trial Exhibit No. 23—(Continued)

Mark Chamberlain, one of the libelants' witnesses, testified that, in a conversation with the cook after the strike, the cook told him that the food was satisfactory.

With reference to the weavils that were found in the cereal and rice, the testimony indicated that such infestation commonly occurs in hot weather and most ships in Asiatic water experience the same difficulty. It is common practice to remove such weavils by straining and washing and this was done before the rice and cereals were used.

The testimony that there was an insufficiency of food was unsatisfactory. The crew members received much more food than that called for in the "Scale of Provisions" set forth in the Articles which is practically the same scale applicable to American ships. One witness testified that the men were only served one egg a day or 7 eggs a week. This is 3½ times as many eggs as required by the scale. He also testified that the crew members were not supplied with sandwiches in the evening, although he did admit that bread and preserves were made available to them.

The testimony of the ship chandler and the exhibits, consisting of purchase orders and delivery receipts, corroborate the testimony of the steward that he had ordered a sufficient amount of food for a 3½ month trip. The testimony also shows that the quality of the food was the same as that purchased by American ships and the ship chandler testified that it was of a better grade than that

Pre-Trial Exhibit No. 23—(Continued)

normally served on foreign ships of the same class. The ship was to be re-provisioned in Singapore where the testimony showed an ample supply of good food was available.

In view of this evidence, I am of the opinion that the libelants have failed to prove their first contention, namely, that the foodstuffs supplied for the contemplated voyage were spoiled and unfit for human consumption and insufficient in quantity and quality for the proposed voyage.

Libelants' second contention is that "the living quarters of the crew were filthy and vermin-ridden and not fit for habitation for said voyage." In support of this contention, 2 witnesses testified. One was a member of the crew and the other was Reverend Mark Chamberlain whose knowledge of ships, particularly freighters, was extremely limited. They testified that there were cockroaches on the ship, that the mattresses were dirty and some of them were torn, and that the crew's toilet and sink needed repair. There are cockroaches on this ship. I saw them myself, but the evidence showed that practically all, if not all, ships carrying freight have cockroaches. Some of the mattresses were dirty and one or two of them were torn, but these mattresses, which had been purchased or renovated in October of 1951, had been used by the members of the crew of the deck of the vessel while it was carrying coal from Singapore to Japan. The toilets and wash basins were among the items to be repaired while the ship was in Portland.

Pre-Trial Exhibit No. 23—(Continued)

Here again libelants have failed to sustain the burden of proof as to this contention.

Libelants third contention is that "the fire fighting equipment and hose on said vessel were not in operating condition." The only evidence adduced in support of this contention is that the smothering line valves could not be turned by hand. I find, from the preponderance of the testimony, that the master valve was the only one that could not be hand-turned and that, on many ships, the master valve is closed by a spanner or other tools to prevent possible leakage. The fire fighting equipment was one of the items covered by the survey of the American Bureau of Shipping and, before the Riviera sailed, it would have to be in satisfactory condition before a certificate would issue.

Libelants fourth contention is that "the lifeboats and emergency equipment were old, rotten, and in disrepair and were unseaworthy, and the launching gear of said lifeboats was in disrepair." In addition to the work done by the bo'sun and the 2 men in Singapore, the work order issued to the Albina Engine & Machine Works called for the testing and repair of air tanks and 4 lifeboats, the removal of the water tanks in each of such lifeboats, the repair of 2 provision tanks and 3 air tanks, and the removal of some of the plating and the installation of new plating in lifeboats numbers 1 and 2. The purchase orders from the ship chandler indicated that, both before and after the strike, provisions for the lifeboats were purchased. The unsupported

Pre-Trial Exhibit No. 23—(Continued)

statement of one witness that the launching gear was in disrepair was contradicted by respondent's witnesses and I personally, in the presence of libelants' proctor, saw the launching gear for 2 lifeboats being satisfactorily operated.

The last contention of libelants is that "the vessel was not properly or sufficiently manned." The Riviera left Bremen with a full crew and the testimony indicated that the crew was more than was needed to safely and satisfactorily operate the vessel; that at various ports some of the men left the vessel because of illness and others deserted; that additional crew members were signed on but, at the time it was in Portland, the vessel had a crew of 5 less men than it had at the time it left Bremen.

In spite of that fact, the testimony indicated that at all times there were ample men in the engine room and that there was a sufficient deck crew to stand watch; that, when the vessel was in Portland, the Master was attempting to procure additional seamen for the trip to India. I find that, even without additional seamen to make this voyage, there was a sufficient crew to man the vessel but, even if this is not true, the vessel was not ready to sail and the conduct of the men in going on strike was premature. No inquiries were made concerning additions to the crew and the crew members did not know whether additional men would be signed on prior to the time the vessel sailed.

From the above facts, it appears to me and I find that the libelants have failed to prove any of the

Pre-Trial Exhibit No. 23—(Continued)

grounds asserted by them to justify their refusal to work and their refusal to obey the lawful commands of the Master.

In my opinion, none of these contentions played a part in the decision of the crew to strike. I am convinced that they were motivated by a desire to cut down the term of their service from 2 years to a much shorter period and that the strike was called primarily to obtain higher wages for the balance of the trip—wages which would be comparable to those paid by American ships to American seamen. In this they were encouraged by the advice from the crew of the SS Cotton State and the Makiki statement.

I find that the Master was justified in terminating the employment of the libelants on September 9, and that libelants are not entitled to any penalties for the failure of the Master to pay them their wages nor are they entitled to transportation from Portland, Oregon, to their respective places of shipment or to the places designated in their Articles for delivery at the conclusion of the voyage.

In spite of my feeling that the libelants were encouraged to strike by American seamen and by information concerning the success of the SUP in connection with the negotiation of the Makiki contract, I am of the opinion that the owner of the Riviera has failed to sustain the burden of proof in its libel against the Sailors Union of the Pacific and the 3 individuals therein named. I therefore

Pre-Trial Exhibit No. 23—(Continued)

find that the respondents in such case, being Civil No. 6661, are entitled to a decree in their favor.

It is admitted that, on September 9, 1952, the libelants had earned for unpaid wages and overtime compensation the sums listed in Article 2 of the respondent's answer in Civil No. 6652. Wages total $2,708.57.

The respondent contends that, by reason of the fact that the libelants refused to work or obey the lawful commands of the Master and by reason of their having gone on strike, they are, by law, guilty of desertion and all other wages should be forfeited. In its cross-libel, the respondent demands damages against libelants for $20,000 for expenses and loss of profits from September 9 to September 26, the period in which they claim libelants were unlawfully in possession of the vessel and for an additional $30,000 for cost of replacing the crew and for loss of profits during such time. It appears that the admiralty courts have the discretionary power to declare either a total or partial forfeiture of seamen's wages in cases where desertion has been proved. In other words, even where desertion has been proved, the court need not order a total forfeiture and the amount of the forfeiture should depend upon the culpability of the individuals involved.

In spite of the fact that all of the libelants went on strike, I do not believe that all of them were

Pre-Trial Exhibit No. 23—(Continued)

equally culpable. Likewise, I believe that there are some mitigating circumstances. For that reason I will give further consideration to this question and I will announce my decision either later today or tomorrow.

With reference to the claim for $50,000 asserted by the respondent against the libelants, I appreciate that the men are not in a position to respond in damages except to the extent of the wages due them. However, it is my duty to assess the damages to which I think the respondent is entitled, if I find that respondent is entitled to damages, regardless of its collectibility. As to the first claim, I have doubt as to whether it was the libelants' occupancy of the ship or the picket line which resulted in respondent's damages and I likewise have some doubt as to whether or not claims of this type may be asserted in this proceeding. I desire to give this matter further consideration and I will announce my decision at the same time I announce my decision on the claim of forfeiture.

PRE-TRIAL EXHIBIT No. 35

[Title of District Court and Cause No. 6699.]

AFFIDAVIT

State of Oregon,
County of Multnomah—ss.

I, Hans Heinrich Wilhelm Paul Koster, being first duly sworn, on oath depose and say: That I am, and have been, a member of the crew of the SS Riviera; that said vessel came to the Port of Portland on or about September 3, 1952, and by reason of the conditions of my employment on said vessel I and a majority of the other members of the crew of said vessel collectively ceased working thereon on September 9, 1952, and thereafter designated the Sailors' Union of the Pacific as my agent for the purpose of collective bargaining, and ever since said time the Sailors' Union of the Pacific has been, and now is, my agent for purposes of collective bargaining with respect to employment and employment conditions aboard the SS Riviera; that the picketing of the SS Riviera is for the purpose of giving full publicity to the dispute which now exists, and which has existed, between the operators of said vessel and a majority of the crew members employed on said vessel.

/s/ HANS KOSTER

Subscribed and sworn to before me this 4th day of November, 1952.

[Seal] /s/ RICHARD R. CARNEY,
Notary Public for Oregon.

PRE-TRIAL EXHIBIT No. 82

WE ARE ON STRIKE

BECAUSE WE HAVE BEEN SHANGHAIT IN BREMEN FOR TWO YEARS AGREEMENT.—

ALL WHAT THE CAPTAIN PROMISED IN THE PAST IS NOT REALISED AND SO WE WANT OUR PAY-OFF AND HOMEVOIAGE.

CREW OFF THE
S/S "RIVIERA"

Portland (Oregon-U.S.A.) Septembre 9th, 1952

"Crew on Strike"

[Signed Signatures on reverse side]

/s/ Baardman, Cabin Boy
/s/ IV W. Wilhelm
/s/ III Eng. Klunker
/s/ F. U. Kaiser DG
/s/ [Illegible] DG
/s/ G. Dziesa, E.M.
/s/ Diepel A.B.
/s/ Fullhase, A.B.
/s/ Goldsmith A.B.
/s/ Elschner, A.B.
/s/ Nohr, O.S.
/s/ H. Koester
/s/ [Illegible]
/s/ Minder 2nd Cook
/s/ [Illegible]

PRE-TRIAL EXHIBIT No. 83

Marine Guide

Daily Marine Information, Pacific Northwest Ports
1708 Smith Tower, Seattle 4, SE 2556; 718 W. Burnside, Portland 9, BR 6544

Vol. 34, No. 20 Thursday, January 29, 1953

TIME CHARTER RATES HIT LOW IN DECEMBER

Time charter rates for dry cargo ships in December sank to their lowest levels since the war, bringing 1952 to a close with rates barely one-quarter what they were when the year began. As measured by the Norwegian Shipping News freight index and reported by the Journal of Commerce, New York, time charter rates during December averaged 60.4 (July through December, 1947 equals 100.0) as compared with the index number of 224.2, which was set in January of last year.

The previous postwar low point was recorded in March of 1950, when the index was 63.3. After rising sharply with the onset of war in Korea, and ultimately reaching an all-time peak of 249.5 in November of 1951, world-wide time charter levels have come plummeting down almost unchecked ever since.

Trip charter rates—those paid for a single voyage rather than for a specified period of time—did not rise to the peak set by the time charter levels and have not come down as far. The trip charter index for December was 89.3, less than one point

below the levels of October and November and well above the postwar low of 67.5 set in October of 1949.

The year 1952 also ended with rates for tankers at considerably lower levels than when it began.

Following are the index figures for dry cargo charter rates and from the beginning of 1951 through December of 1952:

(July-December, 1947—100.0)

	Trip Charter		Time Charter	
	1951	1952	1951	1952
January	139.6	167.9	147.1	224.2
February	152.9	155.8	160.1	222.0
March	173.5	138.2	192.5	150.1
April	182.7	128.1	206.0	129.7
May	190.2	124.9	216.0	124.0
June	190.3	108.4	238.0	106.8
July	177.2	89.3	214.0	94.8
August	175.8	83.7	205.0	67.4
September	182.0	87.2	228.0	66.0
October	186.0	90.3	231.0	69.3
November	192.0	90.3	249.5	68.9
December	177.9	89.5	238.0	60.4

PRE-TRIAL EXHIBIT No. 85

[Title of District Court and Cause No. 6745.]

AFFIDAVIT

State of Oregon,
County of Multnomah—ss.

I, Jeff Morrison, being first duly sworn, on oath depose and say: That I am a member of Seafarers' International Union, Atlantic and Gulf District, and that I am employed as an assistant to the West

Coast representative as agent in the Port of Seattle, Washington; that my duties include the business of the union in the Ports of Seattle, Washington, and Portland, Oregon; that the Atlantic and Gulf District of the Seafarers' International Union is a voluntary association of unlicensed seamen who are now employed in the deck department, the steward department and the engine room department on vessels engaged in foreign and domestic commerce; that many of said members have been, and now are, employed on vessels carrying cargoes of grain from ports of the United States to ports of India and the Far East; that members of said union are now actively seeking employment aboard vessels engaged in the trade of carriage of cargoes, and particularly cargoes of grain from ports of the United States to ports of India and the Far East.

That I am informed that the plaintiff is a Panamanian corporation, and owned by a Greek named Evangelos P. Nomikos, who is a subject of South African but lives in London, England; that the SS Riviera is an American-built Liberty ship which was constructed by the United States Maritime Commission at Richmond, California, in 1943, and was originally the SS John Palmer; that I am informed that this ship was transferred to the government of South Africa at the end of World War II, and subsequently transferred to the plaintiff, who immediately registered it under the laws of Liberia; that the plaintiff has placed the vessel in the grain charter trade, which trade consists of the carriage of American grown grain from ports

of the United States to ports of India and the Far East, and which grain and its transportation is paid for by the government of the United States through the government of India under the provisions of the Aid to India Act.

That for sometime past, and now, members of the Seafarers' International Union, Atlantic and Gulf District, have been employed aboard ships engaged in that trade; that the plaintiff has adopted the policy of signing on crews and officers on its vessels under a form of British Articles, and has been, and is now, employing seamen from various foreign countries to work under such articles without union collective bargaining agreements at wages and working conditions inferior to those established on vessels on which members of the Seafarers' International Union, Atlantic and Gulf District, are employed; that by reason of the manner and method in which the plaintiff is operating its vessels the plaintiff is undermining and destroying, and will continue to undermine and destroy, the standards being maintained by the Seafarers' International Union, Atlantic and Gulf District, on vessels engaged in the grain charter trade; that the plaintiff in the operation of its vessels is purposely seeking to avoid the maritime laws of the United States, the International Conventions for Safety at Sea, and the terms and conditions of employment maintained by employers of members of said union; that on account of the plaintiff's operation of its vessels in this manner, plaintiff has been able to, and is now able to, underbid the employers of the

members of said union for charters in that trade and commerce, and the members of said union have been, and are now, deprived of employment in the trade.

That upon arriving in Portland, Oregon, on December 10, 1952, I was informed that the master of the SS Riviera and the plaintiff's agents and representatives in Portland, Oregon, had made it known that they did not intend to employ American seamen on said vessel, and particularly that they did not intend to employ members of the Seafarers' International Union, Atlantic and Gulf District, under the terms and conditions obtaining on other vessels where they are employed in the same trade; but on the contrary it is the intention of the owners and master of the SS Riviera to employ a crew of foreign seamen at foreign ports at wages and under conditions materially less favorable than those on ships where members of said union are employed, and to fly such foreign seamen to Portland in order to man the ship: that nevertheless I sought to contact the plaintiff's agents and the master of the SS Riviera to request employment for members of said union to fill the vacancies now existing in the various departments aboard said vessel; that although I was unable to personally contact the master of said vessel, I was informed that plaintiff did not desire to hire American seamen; that after receiving conflicting reports as to the whereabouts of the master of the vessel, and after it was made clear to me that the plaintiff or its agents did not have any desire to discuss the matter of employment with

me, the unfairness of the plaintiff was given publicity by means of banners and placards carried on the dock by pickets who are members of the Seafarers' International Union, Atlantic and Gulf District.

That because of the controversy between the plaintiff and said union over the employment of unlicensed personnel on the SS Riviera, there is now a labor dispute between the plaintiff and the union, and there is also a labor dispute between the plaintiff and the union because of the plaintiff's activities which are undermining said union's economic interest in the working conditions and wages of unlicensed personnel aboard vessels engaged in the grain charter trade; also there is a labor dispute between the plaintiff and said union on account of the controversy between the plaintiff and the defendants over the terms of employment, wages and working conditions followed by the plaintiff on the SS Riviera.

That the picketing of the SS Riviera by the Seafarers' International Union, Atlantic and Gulf District, is for the purpose of giving publicity to the unfairness of the plaintiff in the operation of its vessel, and to give publicity to the labor disputes existing between the plaintiff and the Seafarers' International Union, Atlantic and Gulf District; that the picketing is peaceful, and no violence has occurred or grown out of the picketing.

That the picketing by the Seafarers' International Union, Atlantic and Gulf District, was begun

December 10, 1952, and said picketing is in furtherance of the economic interests of the Seafarers' International Union, Atlantic and Gulf District; that said union does not now represent, and has never represented, any of the former members of the crew of the SS Riviera, and said union has no interest whatsoever in the employment or reemployment of said former crew members of the SS Riviera, but on the contrary said union is desirous of raising the wage standards and working conditions aboard said vessel and of having its own members placed on said vessels where employment is available.

That the following shows the wage differences for the various ratings between what is paid on the SS Riviera and what is paid to members of the Seafarers' International Union, Atlantic and Gulf District:

Job	Riviera Wage	SIU Wage	Difference
Ordinary Seaman	$ 45.00	$239.40	$194.40
Able-bodied Seaman	68.00	302.32	234.32
Bos'n	90.00	378.00	288.00
Carpenter	80.00	353.85	273.85
Oiler	88.00	302.32	214.32
Fireman-water-tender	68.00	302.32	234.32
Fireman	70.00	286.99	216.99
Chief Cook	100.00	340.74	240.74
Messman	30.00	237.57	207.57
Asst. Steward	70.00	237.57	167.57
Overtime	.40	1.48 (nonrated men)	1.08
		1.87 (rated men)	1.47

/s/ JEFF MORRISON

Subscribed and sworn to before me December 12, 1952.

[Seal] /s/ RICHARD R. CARNEY,
Notary Public for Oregon.

PRE-TRIAL EXHIBIT No. 86

[Title of District Court and Cause No. 6699.]

COMPLAINT

Comes now the plaintiff and for cause of suit against the defendants, complains and alleges:

I.

At all times hereinafter mentioned plaintiff was and is now a corporation duly organized and existing under and by virtue of the laws of the Republic of Panama. Plaintiff is the owner of the steamship "Riviera" and is operating said vessel in foreign commerce between the United States and other countries. The steamship "Riviera" is registered in the Port of Monrovia, and is sailing under the flag of the country of Liberia. Said plaintiff has entered into a charter for the service of said ship in the carrying of cargo of wheat from the United States to India. Said ship is now located in the Port of Portland preparing to carry out said charter. In the conduct of its business it is necessary for plaintiff to operate said steamship "Riviera" for the transportation of commodities from the United States to a foreign country.

II.

The defendants William Benz and Robert Williams are members of the Sailors' Union of the Pacific, an unincorporated association having a president, secretary, port agent and patrolman and having rules and regulations by virtue of which members thereof act as an organized body as represented by said principal officers, the acts of said officers being agreed to by the acts of each individual member of such union. The president and secretary of said union are residents of the State of California. The defendant William Benz is the port agent of said union and the defendant Robert Williams is the patrolman of said union. Sailors' Union of the Pacific has a membership of upwards of 7000 men, many of whom are employed on ocean-going vessels and it would be impracticable and impossible to join all of said members of Sailors' Union of the Pacific as defendants in this suit. The defendants William Benz and Robert Williams are therefore sued as representatives of all of the members of Sailors' Union of the Pacific. Said union claims to represent certain members of the crew of the steamship "Riviera" who deserted from said vessel prior to the institution of this suit and said defendants Benz and Williams are sued as the representatives of said deserting crew men and anyone that said Sailors' Union of the Pacific claims to represent for purposes of collective bargaining. The defendants John Doe, Richard Doe, John Roe, Richard Roe, James Doe and James Roe are members of Sailors' Union of the Pacific and/or pickets

who are engaged in picketing said vessel in concert with or as agents and employees of the other named defendants. Plaintiff will substitute the true names of the last named defendants as and when plaintiff ascertains them. The defendants Benz, Williams, John Doe, Richard Doe, John Roe, Richard Roe, James Doe and James Roe are each citizens and inhabitants of the State of Oregon. The plaintiff is a citizen and inhabitant of a state or country different from that of each of the defendants.

III.

Between March, 1952 and August, 1952, the crew members of the steamship "Riviera" signed British articles whereby said crew members agreed to work on said ship on a voyage from Bremen, Germany for a period of two years and further agrees that British Maritime Board conditions were to apply to wages and hours of employment, and agreed that shore leave and cash advances were to be at the discretion of the master of said ship. By the terms of said Articles of Agreement, said crew members and plaintiff herein agreed upon the wages to be paid to the crew members and the provisions to be furnished to crew members, and the scale of wages and provisions as agreed upon were set forth in said agreement. Said crew members further agreed by the terms of said articles to be obedient to the lawful commands of said master in everything relating to said ship and the stores and cargo thereof, whether on board, in boats, or on shore. Upon arrival at the Port of Portland the steamship "Rivi-

era" was docked at the Port of Portland drydock on September 3, 1952.

IV.

On or about the 9th day of September, 1952, the crew of the "Riviera" with the connivance, counsel and assistance of the above named defendants and the Sailors' Union of the Pacific refused to obey the lawful orders of the master of said vessel and to and including September 26, 1952, the crew of said vessel unlawfully held possession thereof to the exclusion of the owner of said vessel. On or about September 26, 1952 pursuant to an order and decree of the United States District Court for the District of Oregon, In Admiralty, made and entered on September 25, 1952, the crew left said vessel and said court thereafter in a suit instituted by the members of the crew of said vessel on October 22, 1952 held that certain members of said crew were deserters. Since September 26, 1952, the defendants and each of them and the persons represented by them have picketed and caused to be picketed the steamship "Riviera" whereby employees of independent contractors with whom the plaintiff had contracts have been persuaded and induced not to carry on their work on board said vessel and said vessel has been entirely idle. The defendants, and each of them, certain deserting members of the crew, and all of the members of the Sailors' Union of the Pacific as represented by the defendants Benz and Williams are supporting, encouraging, financially assisting and individually participating in the maintenance of said picket line and in preventing plain-

tiff from continuing the operation of said vessel and the voyage for which she was making preparation. Said defendants and the members of Sailors' Union of the Pacific as represented by the defendants Benz and Williams have conspired among themselves and with the other defendants named above to continue the picketing of said vessel in order to prevent plaintiff from continuing the voyage upon which said vessel is engaged and will continue to carry on such activities unless restrained by the court.

V.

The alleged purpose of the picketing and the interference with the operation of plaintiff's vessel on the part of defendants and the members of Sailors' Union of the Pacific for which the defendants Benz and Williams are acting is to compel plaintiff to breach its contract with members of the crew of the steamship "Riviera" still aboard said vessel, to compel plaintiff to acquiesce in the desertion and the breach of the vessel's articles by certain members of the crew of the steamship "Riviera", and to compel plaintiff to enter into a new agreement with the Sailors' Union of the Pacific. Plaintiff has in all respects complied with its obligations under the articles hereinabove referred to.

VI.

As a result of the picketing of the steamship "Riviera" by the defendants, and each of them, the vessel has been idle since September 26, 1952 and the employees of contractors with whom plaintiff

had entered into contracts for the repair and preparation of the vessel to carry her cargo of grain to India have refused to perform their duties on board the vessel and plaintiff has been unable to carry out its obligations under the charter party and its right to pursue the vessel's voyage. Plaintiff is suffering damage while such picketing continues in an amount in excess of $1500.00 per day, and damages which have to date accrued since September 26, 1952 over and above damages sustained by said vessel, that have heretofore been sued for, exceed $30,000.00.

VII.

Plaintiff has been and will be, if the picketing is continued, prevented from employing said vessel and from carrying out the terms of the aforesaid charter party and defendants threaten to continue the aforesaid conduct indefinitely and will continue to prevent plaintiff from operating said vessel. Plaintiff has made commitments for voyages succeeding the voyage upon which the vessel is immediately destined to embark and plaintiff is threatened with the loss of its charter of said vessel and with claims that may arise against plaintiff by reason of its inability to perform its obligations. By reason of the activities of the defendants and each of them hereinabove described, plaintiff's ability to obtain charters for the steamship "Riviera" and other vessels owned and operated by it have been and are being impaired because of its inability to continue the voyage of the steamship "Riviera", and plaintiff's reputation for honesty,

fair dealing and the carrying out of its contract obligations has been impaired. The damage caused to plaintiff by the defendants, and each of them, as hereinabove described, is irreparable and incapable of computation. All of the acts of the defendants, and each of them, hereinabove described were designed to have caused plaintiff irreparable loss of business and earnings and unless the acts of said defendants are restrained by this court, plaintiff will continue to suffer such irreparable damage.

VIII.

The public officers of the City of Portland, of the County of Multnomah and of the State of Oregon have taken no action to stop said unlawful conduct hereinabove described although requested to do so by plaintiff.

IX.

Plaintiff has no plan, speedy or adequate remedy at law or otherwise than in equity.

Wherefore, plaintiff prays that this court make an order:

1. Requiring the defendants, and each of them, to show cause in this court on a date and time stated in said order why they and each of them should not be restrained and enjoined from engaging in each and all of the acts hereinabove described;

2. Restraining and enjoining pendente lite the defendants and each of them and all persons acting by, through or under them and all members of said

Sailors' Union of the Pacific, or persons acting in concert with them, from engaging in each and all of the acts herein complained of and particularly restraining and enjoining them, and each of them, and all persons acting by, through or under them, from picketing or patrolling at or near the gangplank of the steamship "Riviera" or at any point where it is necessary for persons having business with said vessel to pass, or from placing signs stating that there is a strike in which the steamship "Riviera", her crew or owners are involved, or from doing any other act or thing tending to prevent plaintiff from continuing the voyage of the vessel;

3. Enjoining and restraining the defendants, and each of them, and all persons acting by, through or under them, and all members of the Sailors' Union of the Pacific, and all persons acting in concert with them permanently from engaging in each and all of the acts herein complained of and particularly restraining and enjoining them, and each of them, and all persons acting by, through or under them, from picketing or patrolling at or near the gangplank of the steamship "Riviera" or at any point where it is necessary for persons having business with said vessel to pass, or from placing signs stating that there is a strike in which the steamship "Riviera", her crew or owners are involved, or from doing any other act or thing tending to prevent plaintiff from continuing the voyage of said vessel;

4. Awarding to plaintiff its damages in the sum of $30,000.00 and its accruing damages at the rate of $1500.00 per day, and plaintiff's costs and disbursements and

5. For such other and further relief as the court may deem just and equitable in the premises.

WOOD, MATTHIESSEN, WOOD & TATUM
/s/ GUNTHER F. KRAUSE,
Attorneys for Plaintiff.

United States of America,
District of Oregon—ss.

I, S. Pangas, being first duly sworn, depose and say that I am the Agent of the plaintiff above named; that I know the contents of the foregoing complaint, and the same is true, as I verily believe.

/s/ S. PANGAS

Subscribed and sworn to before me this 28th day of October, 1952.

[Seal] /s/ GERTRUDE GRAY,
Notary Public for Oregon.

[Endorsed]: Filed October 28, 1952.

[fol. 490] ARGUMENT AND SUBMISSION—November 16, 1956

(omitted in printing)

[fol. 491] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MINUTE ENTRY OF ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENTS—April 6, 1956

ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that Judgments be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

[fol. 492] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Nos. 14,663, 14,664, 14,665

WILLIAM BENZ, et al., Appellants

vs.

COMPANIA NAVIERA HIDALGO, S. A., Appellee

M. D. MACRAE, et al., Appellants

vs.

COMPANIA NAVIERA HIDALGO, S. A., Appellee

JEFF MORRISON, et al., Appellants

vs.

COMPANIA NAVIERA HIDALGO, S. A., Appellee

Before: BONE and ORR, Circuit Judges and MURPHY, District Judge

OPINION—April 6, 1956

MURPHY, District Judge:

These are appeals from judgments awarding damages in three separate suits brought by the appellee, a Panamanian corporation, in the district court. Appellee is the owner

and operator of the S. S. Riviera, a vessel of Liberian registry. The appellants, defendants in the several actions below, are citizens of the State of Oregon and of states or countries different from that of the plaintiff. Appellants were sued individually as officers of three voluntary unincorporated labor associations, and also as representatives of classes composed of the members of their respective labor associations.

[fol. 493] These cases were before us previously, on appeals from interlocutory injunctions issued against the same appellants to restrain them from picketing appellee's vessel. *Benz* v. *Compania Naviera Hidalgo, S.A.*, 205 F. 2d 944 (9th Cir., 1953). The vessel had sailed before the case came on for hearing and we accordingly dismissed for mootness, returning the case to the district court for trial of the damage claims. We directed that those claims be prosecuted free from the effects of res judicata arising from the injunctions, and generally "as free from the effects of such injunctions, as if the same had not been issued." Id., at p. 947.

The basic facts are these: The Riviera arrived at the Port of Portland, Oregon, on September 3, 1952. Her crew were all foreign nationals, chiefly Germans and British, who between March and August, 1952, had signed British articles in Germany, agreeing to work on the ship on a voyage from Bremen, Germany, for a period of two years, and agreeing that British maritime board conditions should apply to their wages, hours of employment and working conditions. About September 9th, the crew entered upon a strike and refused to leave the vessel. They remained on the vessel and on strike until September 26, 1952, when they were required by an order and decree in admiralty issued out of the district court to leave the ship.

The district court found that the company had lived up to all of its obligations under the articles, that the vessel was seaworthy, and that the purpose of the strike was to secure shorter articles and higher wages than those agreed upon. On October 14, 1952, the Sailors' Union of the Pacific, pursuant to resolution duly passed by its members, took up the picketing of the ship, which had been carried out hitherto by the striking crew itself. From October 14th to November 26, 1952, when it was enjoined from further

picketing by the district court, the Sailors' Union of the Pacific picketed the vessel for the purpose, as the district court found, of compelling the company to rehire the striking crew members at higher wages, different conditions, and for shorter articles than those agreed upon.

On November 28, 1952, two days after the injunction against the Sailors' Union of the Pacific was issued, another picket line was established at the vessel by Local 90 of the [fol. 494] National Organization of Masters, Mates and Pilots. The district court found that the purpose of the picketing was to enforce the demands of the crew and to assist the Sailors' Union of the Pacific in enforcing the demand for that union that the crew be rehired on the conditions and terms demanded. On December 8, 1952, the National Organization of Masters, Mates and Pilots, Local 90, was enjoined from further picketing.

On December 10, 1952, another picket line was established by the Atlantic and Gulf District, Seafarers' International Union, and maintained until restrained by the district court on December 12, 1952. The district court found that the purpose of the picketing by the Atlantic and Gulf District, Seafarers' International Union, was the same as that of the National Organization of Masters, Mates and Pilots, Local 90, that is, to assist the Sailors' Union of the Pacific in enforcing its demand that the striking crew be rehired on different terms than those agreed upon, and to compel the company to meet that demand.

The district court further found that all picketing was at all times peaceful and orderly, that the refusal of shore employees engaged in repair and loading of the vessel to cross the picket lines was directly caused by the picketing of the appellants, and assessed damages in accordance with the number of days' delay caused by each of the appellants respectively.

Appellants' specifications of error, so far as they relate to questions of law, may be grouped under three general categories. It is argued that the district court erred in concluding that (1) it had jurisdiction to try these damage cases, (2) the acts complained of constituted actionable torts under Oregon law, and (3) that these were proper

class suits and that the judgments could be enforced against the assets of unincorporated associations.

(1) The district court's jurisdiction is attacked, first, by reason of the Norris-La Guardia Act's prohibitions against injunctions in labor disputes. See Title 29 U.S.C.A. Secs. 101-114. The appeals before us, however, have nothing to do with the injunctions issued by the district court in the previous litigation between the parties at bar. The Norris-LaGuardia Act is not involved in these cases, and is not discussed further.

[fol. 495] The district court's jurisdiction is next assailed on the ground that the picketing by the labor associations here invloved is within the protection, or alternatively, prohibition of the National Labor Relations Act as amended by the Labor Management Relations Act, 29 U.S.C.A. 141 et seq.

The district court's jurisdiction derived from 28 U.S.C.A. 1332(a)(2). In granting a remedy, it was applying the tort law of Oregon. The question posed, therefore, is whether the reach of the federal labor legislation extends to take exclusive cognizance of the cause, forestalling the exercise of jurisdiction by courts acting as courts of enforcement of state law, and relegating the dispute to the National Labor Relations Board. It may be noted that no party to any of these cases at any time had resort to the Board.

Appellee argues, on the basis of cases holding that the collective bargaining provisions of general labor legislation are not applicable to seamen during the period of valid articles, *Southern Steamship Co.* v. *NLRB*, 316 U.S. 31 (1942); *Rees* v. *U. S.*, 95 F. 2d 784 (4th Cir. 1938); *Peninsular & Occidental Steamship Co.* v. *NLRB*, 98 F. 2d 411 (5th Cir. 1938), that the picketing here undertaken by the labor associations to enforce the demands of a crew of a vessel in violation of their articles is not within the scope of the conduct regulated by the National Labor Relations Act, as amended. Appellee argues further that, regardless of the applicability of general American labor legislation to American maritime labor disputes, Congress did not intend to subject this dispute to the National Labor Relations Act, as amended. This is a dispute between a foreign employer and a foreign crew having signed foreign articles

in a foreign port to serve on a foreign ship. The sole points of contact with America in this case are the eruption of the dispute in an American port, and the participation of American labor associations in the dispute by means of picketing.

It may well be that American laws should not be construed to apply, without some more explicit Congressional indication than we are able to find in the National Labor Relations Act, as amended, to situations with as many points of foreign contact as the situation at bar. Cf. *Lau-*
[fol. 496] *ritzen* v. *Larsen*, 345 U.S. 571 (1953) (Applicability of Jones Act to foreign seamen injured on foreign vessel. See especially the discussion of Mr. Justice Jackson, for the Court, at p. 581 et seq.) The National Labor Relations Board, furthermore, seems to have taken the position that it has no jurisdiction to determine the collective bargaining agent for the crew of a foreign vessel. *Sailors' Union of the Pacific, Case No. 20, R. C. 809, C.C.H. Labor Reports, 1950-51, N.L.R.B. Decisions, Par. 10,081 May 1, 1950.*

However, it does not seem to us necessary to decide the question whether and to what extent the National Labor Relations Act, as amended, would extend to the controversy before us. The narrow question before us is not whether the National Labor Relations Act, as amended, applies to this dispute at all, but whether it has pre-empted the field so completely as to bar Oregon from giving a remedy by means of an action in tort for the damage done by the picketing here involved. That question seems to us decisively settled by the Supreme Court in *United Construction Workers* v. *Laburnum Construction Co.*, 347 U.S. 656 (1954). In that case, damages were sought in a state court for harm done by picketing, including harm done by violent picketing. The Court said, with respect to the union's argument there:

> "They claim that state courts accordingly are excluded not only from enjoining future unfair labor practices and thus colliding with the Board, as occurred in Garner v. Teamster's Union, 346 U.S. 485, but that state courts are excluded also from entertaining common-law tort actions for the recovery of damages

caused by such conduct. The latter exclusion is the issue here. In the Garner case, Congress had provided a federal administrative remedy, supplemented by judicial procedure for its enforcement, with which the state injunctive procedure conflicted. Here Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct." At 664.

The Court went on to affirm the award of damages in the state court. The *Laburnum* case thus established as the test of concurrent state jurisdiction, the lack of a substantially similar remedy in the federal scheme of regulation of labor disputes.

[fol. 497] The remedy sought in the cases before us is damages. No such remedy exists under the federal law for this fact situation. This is not a secondary boycott or a case of an award of back-pay to re-instated employees where money damages may be recovered under federal law. See *Laburnum, supra*, at 665. Under the test enunciated in the *Laburnum* case, therefore, the state courts of Oregon, and the federal district court sitting in a diversity case, clearly have jurisdiction of a common law tort action for damages done by unlawful picketing. Appellants urge upon us the distinction that in the *Laburnum* case the picketing itself was unlawful in the sense that the means used were violent, whereas in the instant case, the means of picketing were peaceful, but the end unlawful. This distinction might have been argued before the *Laburnum* decision. See Cox, *Federalism in Labor Law*, 67 Harv. L. Rev. 1297, 1327 (1954). And an argument much to the same effect was made in the dissenting opinion in the *Laburnum* case. See 347 U.S. 656, at 669-670. But nothing in the opinion of the Court in *Laburnum* suggests an acceptance of that argument, or an intent to restrict its effect to cases of violent picketing, or other tortious means as distinguished from ends. The Court said in that case, at p. 669:

"If Virginia is denied jurisdiction in this case, it will mean that where the federal preventive administrative procedures are impotent or inadequate, the offenders, by coercion of the type found here, may destroy property without liability for the damage done."

A business may be damaged or destroyed by peaceful picketing as well as by violent picketing. We think that *Laburnum* covers wrongful ends as well as wrongful means.

Appellants have cited *International Brotherhood of Teamsters* v. *N. Y., New Haven & Hartford*, Supreme Court, October Term 1955, No. 33, Jan. 9, 1956. But the Supreme Court there granted certiorari only to determine "whether the state court had jurisdiction to enjoin the petitioner's conduct," and not whether the state could grant tort damages after the harmful conduct had occurred. Nothing in that case modifies the rule of the *Laburnum* case as here applied.

(2) The second category of specifications of error relates to the district court's conclusion that the picketing here in- [fol. 498] volved was for an unlawful purpose and therefore an actionable tort under the law of Oregon. Appellants argue that under the law of Oregon picketing is for an unlawful purpose only when it has for its object the commission by an employer of an illegal act in the sense of a violation of law, not merely an act which is held to be against the public policy of the state.

We have examined the case cited by both briefs and find nothing in them to negative the district court's conclusion that picketing for the purpose of requiring a shipowner to rehire seamen who had struck in violation of their articles is picketing for an unlawful purpose under the law of Oregon. E.g., see *Schwab* v. *Moving Picture Machine Operators, Local No. 159*, 165 Ore. 602, 109 P. 2d 600 (1941).

Appellants also argue that the damage awards deprived them of their right to free speech; that the refusal of the shore employees to cross appellants' picket lines is wrongful conduct on the part of the shore employees and therefore not to be attributed to the appellant's actions and that the appellee could not have been damaged during the period of the picketing because it did not have the custody of the vessel for the idleness of which it claimed damages. We do not feel it necessary, after a reading of the record, to discuss these arguments, except to say that they are unfounded.

(3) The third category of specifications of error relates to the propriety of the class suit and the form of the judgment in each of the three cases. The suits were brought against the officers of the labor associations individually

and as representatives of the members of the respective associations. So far as these suits are class suits, they were properly brought under Federal R. Civ. P. 32(a)(1). The propriety of class suits to sue members of labor unions where those unions may not be sued as separate entities is too well established to require the citation of authority here. Appellants' argument that the members of the unions did not have sufficiently identical interests to constitute them classes subject to class suits, by reason of the fact that they were not all engaged in the off-shore gain trade, lacks substance. We find no error in permitting the suits as class suits.

The district court entered final decrees against the individual officers served, the members of the associations they respectively represented, as a class, and also against the la-[fol. 499] bor associations as separate entities, directing further that execution be had against the personal assets of the individuals served in the actions, and against the assets of the associations, but not against the personal assets of individuals not served. Appellants specify as error the judgments against the association and the order to enforce these judgments against their assets.

Rule 17(b) of the Fed. R. Civ. P. provides that the capacity of an unincorporated association to sue and be sued should be determined by the law of the state in which the district court is held, unless the cause of action arises under federal laws. The cause of action here arises under the laws of Oregon. It is conceded that Oregon follows the common law rule that unincorporated associations, like partnerships, may not be sued in their own names. *Cousins* v. *Taylor*, 115 Or. 472, 239 Pac. 96 (1925); Restatement, *Judgments*, sec. 24, Comment (a).

The question presented, therefore, is whether under Oregon law, although unincorporated associations may not be sued in their names, judgment against their members as classes may nevertheless be enforced against the assets of the associations. At common law, the nature of tort liability was that of the members severally. See *Sperry Products, Inc.* v. *Association of American Railroads*, 132 F. 2d 408 (2d Cir. 1942), Opinion of Judge L. Hand, at 410. And it was the undoubted proposition that the several liabilities

of the members could not be enforced against the assets of the unincorporated associations that led to the adoption of the rule, for the federal courts, of *United Mine Workers* v. *Coronado Coal Co.*, 259 U.S. 344 (1922), in which Chief Justice Taft said:

> " . . . we think that such organizations are suable in the federal courts for their acts, and that funds accumulated to be expended in conducting strikes are subject to execution in suits for torts committed by such unions in strikes." Id. at 391.

The *Coronado* rule was an undoubted modification of the common law as it had developed up to that time. Subsequent to the decision of *Coronado*, the S. Ct. of Oregon decided *Cousins* v. *Taylor*, 115 Or. 472, 239 Pac. 96 (1925), in which it assumed as a ground supporting its decision [fol. 500] holding the officers of an unincorporated association subject to a suit that the association itself could not be liable. And as recently as 1953, the Supreme Court of Oregon affirmed that it had "not as yet adopted the rule of the Coronado case. . . .", See *Lonsford* v. *Bu[illegible]*, 200 Or. 497, 267 P. 2d 208, at 200 Or. 511-512. The *Lonsford* case itself concerned the sufficiency of identity of interest of plaintiffs with other alleged members of a class, so as to entitle plaintiffs to sue as representatives of a class. The Court's dictum there does not suggest that it has modified the common law rule so as to enable appellee here to enforce its judgments against the assets of the associations. Nor do any other cases in the Oregon courts cited to us suggest any such modification. Appellee cites *Brotherhood of Locomotive Firemen, etc.* v. *Tunstall*, 163 F. 2d 829 (4th Cir. 1947). That cause of action arose under federal law and is not apposite to the question before us. The Restatement of Judgments, sec. 78, says:

> "Comment: (c) . . . In States which suit can be maintained against an unincorporated association in its business name, judgment can be rendered which is valid against the assets of the association . . . "

At present, Oregon is not a state in which suit can be maintained against an unincorporated association. It may be

that the courts of Oregon will adopt the rule of the *Coronado* case in time, or that the legislature of that State will enact legislation to that effect, but it is not for the federal courts to modify the common law of the State of Oregon. So much of the final decrees in the three cases, therefore, as grant judgment against the unincorporated associations as such and permit execution against their assets, are reversed. The remainders of the three decrees are affirmed. The cases are remanded for entry of decrees consistent with this opinion.

[File endorsement omitted].

[fol. 501] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14663

WILLIAM BENZ, et al., Appellants

vs.

COMPÀNIA NAVIERA HIDALGO, S. A., Appellee

JUDGMENT—Filed and Entered—April 6, 1956

Appeal from the United States District Court for the District of Oregon.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that that portion of the decree of the said District Court in this cause which grants judgment against the unincorporated association, as such, and permit execution against its assets be, and hereby is reversed, and that the remaining portions of the decree be, and hereby are affirmed, and that said cause be, and hereby is remanded to the said District Court for entry of a decree consistent with the opinion of this Court, with costs in this Court in

favor of the unincorporated association and against the appellee.

It is further ordered and adjudged by this Court, that the unincorporated association recover against the appellee for its costs herein expended and have execution therefor.

[File endorsement omitted.]

[fol. 502] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14664

M. D. MACRAE, et al., Appellants

vs.

COMPANIA NAVIERA HIDALGO, S. A., Appellee

JUDGMENT—Filed and Entered—April 6, 1956

Appeal from the United States District Court for the District of Oregon.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that that portion of the decree of the said District Court in this cause which grants judgment against the unincorporated association, as such, and permit execution against its assets be, and hereby is reversed, and that the remaining portions of the decree be, and hereby are affirmed, and that said cause be, and hereby is remanded to the said District Court for entry of a decree consistent with the opinion of this Court, with costs in this Court in favor of the unincorporated association and against the appellee.

It is further ordered and adjudged by this Court, that the unincorporated association recover against the appellee for its costs herein expended and have execution therefor.

[File endorsement omitted.]

[fol. 503] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14665

JEFF MORRISON, et al., Appellants

vs.

COMPANIA NAVIERA HIDALGO, S. A., Appellee.

JUDGMENT—Filed and Entered—April 6, 1956

Appeal from the United States District Court for the District of Oregon.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that that portion of the decree of the said District Court in this cause which grants judgment against the unincorporated association, as such, and permit execution against its assets be, and hereby is reversed, and that the remaining portions of the decree be, and hereby is affirmed, and that said cause be, and hereby is remanded to the said District Court for entry of a decree consistent with the opinion of this Court, with costs in this Court in favor of the unincorporated association and against the appellee.

It is further ordered and adjudged by this Court, that the unincorporated association recover against the appellee for its costs herein expended and have execution therefor.

[File endorsement omitted.]

[fol. 504] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MINUTE ENTRY OF ORDER DENYING APPELLANTS' PETITION FOR REHEARING—May 7, 1956

On consideration thereof, and by direction of the Court, it is ordered that the petition of Appellants, filed May 2, 1956, and within time allowed therefor by rule of Court for a rehearing of the above cause be, and hereby is denied.

[fol. 505] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MINUTE ENTRY OF ORDER DIRECTING FILING OF OPINION ON APPELLEES' PETITION FOR REHEARING—May 21, 1956

Ordered that the typewritten opinion this day rendered by this Court in above cause on petition for rehearing be forthwith filed by the Clerk.

[fol. 506] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14,663, No. 14,664, No. 14,665

WILLIAM BENZ, et al., *Appellants*

vs.

COMPANIA NAVIERA HIDALGO, S.A., *Appellee.*

M. D. MACRAE, et al., *Appellants,*

vs.

COMPANIA NAVIERA HIDALGO, S.A., *Appellee.*

JEFF MORRISON, et al., *Appellants,*

vs.

COMPANIA NAVIERA HIDALGO, S.A., *Appellee.*

OPINION DENYING APPELLEE'S PETITION FOR REHEARING—May 21, 1956

Before: Bone and Orr, Circuit Judges and Murphy, District Judge.

This is appellee's petition for rehearing.

Appellant's petition for rehearing was denied on May 7, 1956. No issues are presented in appellee's petition which were not heretofore considered by this Court.

It is only the very able opinion of the trial court, urged upon us by the appellee with respect to his chief contention, that prompts us to make further brief comment. Appellee, [fol. 507] conceding that the courts of Oregon have not yet adopted the *Coronado* rule, (allowing suits of unincorporated associations as separate entitles and execution of judgments against their assets) now argues that the common law distinction between class suits against the members of an association and suits against the associations themselves is a matter of "semantics, not substance." The judgment and order entered below restricted the execution of the judgments to the assets of members of the class served in the action, thus preserving the rights of other members of the

class to make their usual defenses, if any, before judgment may be had against them personally and execution may be had against their personal assets. If the assets of the union are indeed the property of the members, to allow execution against those assets would be to allow execution against the assets of persons not served in the action. Plainly, it is because there is this real difference between the remedies of suit against the members as a class and suit against the association itself, that the *Coronado* rule was adopted in the federal courts, and that appellee now seeks to have this Court subsume under the heading of "semantics" the difference between that rule and the one obtaining in the State of Oregon.

The petition for rehearing is denied.

[File endorsement omitted.]

[fol. 508] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 509] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 204

WILLIAM BENZ, et al., petitioners,

vs.

COMPANIA NAVIERA HIDALGO, S. A., a Corporation.

ORDER ALLOWING CERTIORARI—Filed November 5, 1956

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary calendar. The Solicitor General is invited to file a brief, as *amicus curiae*, expressing the views of the National Labor Relations Board.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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JUN 27 1956
HAROLD B. WILLEY, Clerk

In the Supreme Court
of the United States

OCTOBER TERM, 1956

No. 204

WILLIAM BENZ, et al, Individually and as Representatives of All of the Members of the SAILORS' UNION OF THE PACIFIC,

M. D. MACRAE, et al, Individually and as Representatives of All of the Members of Local 90 of the NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL,

JEFF MORRISON, et al, Individually and as Representatives of All of the Members of ATLANTIC AND GULF DISTRICT, SEAFARERS' INTERNATIONAL UNION, AFL,

Petitioners,

vs.

COMPANIA NAVIERA HIDALGO, S. A., a corporation.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

KNELAND C. TANNER,
RICHARD R. CARNEY,
Counsel for Petitioners.

STEVENS-NESS LAW PUB. CO. PORTLAND, ORE.

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In the Supreme Court
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No. .....

WILLIAM BENZ, et al, Individually and as Representatives of All of the Members of the SAILORS' UNION OF THE PACIFIC,

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COMPANIA NAVIERA HIDALGO, S. A., a corporation.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

William Benz, and others, the petitioners above named, respectfully petition for a Writ of Certiorari in

order that this court might review judgments of the United States Court of Appeals for the Ninth Circuit entered on April 6, 1956, affirming in part judgments of the District Court of the United States for the District of Oregon.

OPINIONS OF THE COURTS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is set forth herein as Appendix A, and is not yet reported in Federal (2d) Reporter. The Court's opinion on rehearing is set forth herein as Appendix B, and is not yet reported in Federal (2d) Reporter.

The opinion of the United States District Court for the District of Oregon in the consolidated cases is set forth as Appendix C.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Ninth Circuit which is sought to be reviewed was made and entered on April 6, 1956.

The petitioners' Petition for Rehearing was denied May 7, 1956. The respondent's Petition for Rehearing was denied May 21, 1956.

The jurisdiction of the Supreme Court of the United States is invoked under Section 1254 (1) Title 28 U.S.C.A., 62 Stat. 928.

QUESTIONS PRESENTED

(1) Does the Labor - Management Relations Act, 1947, 61 Stat. 136 et seq., 29 U.S.C.A. Section 141 et seq., deprive a federal court, sitting in a diversity case, of jurisdiction to award damages under the state law for conduct consisting *solely* of peaceful picketing, if such conduct involves an unfair labor practice for which a remedy in damages is allowable under the Act?

(2) Does the Labor - Management Relations Act, 1947, deprive a federal court, sitting in a diversity case, of jurisdiction to award damages for peaceful nonviolent picketing under the state law, if such conduct does *not* constitute an unfair labor practice under the Act?

(3) Is the peaceful picketing of a ship by an uncertified union to induce employees of neutral independent contractors to refuse, in the course of their employment, to work on the ship, as ordered by their employer, where the object is to force the independent contractors to cease doing business with the shipowner in the repairing of the ship, and to require the shipowner to reemploy the crew it had discharged in jobs open on the ship, conduct which is prohibited by the provision of Section 8 (b) (4) of the Labor-Management Relations Act, 1947, and for which a remedy in damages is given in Section 303 of the Act, or conduct which is protected and permitted by the provisions of Section 7 of the Act?

(4) Does the Labor - Management Relations Act, 1947, deprive a federal court, sitting in a diversity case, of jurisdiction to award damages under the state law for

peaceful picketing of a ship by an uncertified union to induce employees of neutral independent contractors to refuse in the course of their employment to work on the ship as ordered by their employers, where the object is to force the independent contractors to cease doing business with the shipowner in repairing the ship, and to require the shipowner to reemploy the crew it had discharged in jobs open on the ship?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the United States Constitution are involved herein:

(1) Artcile I, Section 8, Clause 3:

> "The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. * * *"

(2) Article VI, Clause 2:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The following Statutes are involved herein:

(1) Section 7 of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 140, 29 U.S.CA. Section 157:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

(2) Section (8) (b) (4) of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 65 Stat. 601, 29 U.S.C.A. Section 158 (b) (4):

"It shall be an unfair labor practice for a labor organization or its agents * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees under

the provisions of section 159 of this title; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter. * * *"

(3) Section 301 (b) of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C.A. Section 185 (b):

"Any labor orgainization which represents employees in a industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

(4) Section 303 of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 158, 29 U.S.C.A. Section 187:

"(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title. * * *

(b) Whosoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties and shall recover the damages by him sustained and the costs of the suit."

STATEMENT OF THE CASE

The three cases which are consolidated in this petition were brought as common law actions by a shipowner to recover damages, under state law for the loss of the use of its vessel, caused by peaceful picketing conducted by the petitioners, who are individuals, sued as representatives of a class composed of certain maritime labor unions.

The respondent is a Panamanian corporation and the owner of the SS RIVIERA, a Liberian flag vessel. In March of 1952 the vessel commenced a voyage at Bremen, Germany, to New Orleans, Louisiana, where it loaded a cargo of grain which was carried to the Orient. The vessel then went from the Orient to Portland, Oregon, to undergo certain repairs and to load another cargo of grain for carriage to the Orient.

On September 9, 1952, when the vessel was at Portland, Oregon, practically all of the crew members went on strike and demanded their pay and their transportation to their ports of engagement. They were immediately discharged by the master and were later expelled from the vessel. On September 15, 1952, the crew members signed cards designating the Sailors' Union of the Pacific as their collective bargaining representative. From October 14 to November 26, 1952, picketing of the vessel was conducted by the petitioners, who are members of the Sailors' Union of the Pacific, pursuant to resolution adopted by the union. The petitioners constituting members of the Masters, Mates and Pilots union picketed the

vessel from November 28 to December 8, 1952, and the petitioners who are members of the Seafarers' International Union picketed the vessel from December 10 to December 12, 1952.

During the period of picketing by the petitioners there were 25 jobs open for seamen aboard the vessel.

The picketing was at all times peaceful and involved neither violence nor threats of violence. The employees of independent contractors, engaged in stevedoring and ship repair work on the vessel, refused to work while the pickets were present, although they were ordered to do so by their employers. The respondent was therefore unable to repair and load its vessel, and it laid idle during the picketing.

The respondent brought the instant cases separately in the District Court for the District of Oregon praying for injunction against the picketing and for damages for the loss of the use of its vessel. The cases were filed as class suits against individual members of the union and all the members of the union as a class. The cases were predicated upon the common law of Oregon on the theory that the picketing was for "an unlawful purpose", in that it sought to require the shipowner to rehire its former crew members who went on strike.

The jurisdiction of the District Court was based upon diversity of citizenship and the amount involved, 28 U.S.C.A. Section 1332 (a) (2), 62 Stat. 869.

The District Court allowed temporary injunctions and appeals were taken to the United States Court of

Appeals for the Ninth Circuit, but were dismissed on the ground that the injunctions were moot because the vessel had departed. *Benz, et al v. Compania Naviera Hidalgo,* 205 F2d 944. The cases were remanded to the District Court to be tried on the issue of damages as if the injunctions had not been issued.

The cases were tried in the District Court without a jury. The court found that the picketing was for "an unlawful purpose" and wrongful under the Oregon law, and awarded damages to the respondent for the loss of the use of its vessel during the periods that the picketing continued.

The following are the essential portions of the court's Findings and Conclusions:

> "* * * On or about September 15, 1952, said striking members of the crew of the SS RIVIERA designated the Sailors' Union of the Pacific as their collective bargaining representative. On October 14, 1952, members of the Sailors' Union of the Pacific, acting pursuant to said designation and pursuant to a resolution duly adopted by said union, commenced picketing said vessel and continued to picket it until restrained and enjoined from further picketing by this court on November 25, 1952. Said picketing would have continued thereafter had it not been so enjoined. All of said picketing at, around or near the SS RIVIERA was at all times conducted in a peaceful manner and without any violence." (Finding of Fact XI, Tr. 241).
>
> "*Said picketing by members of the Sailors' Union of the Pacific was intended to prevent the repairing and loading of the SS RIVIERA;* and the sole purpose of said picketing by the members of the Sailors' Union of the Pacific was to compel the plaintiff to re-employ the said discharged, striking

members of the crew of the SS RIVIERA for a shorter period than that stated in the articles, and at wage rates and other conditions more favorable to them than those stated in said articles. (Finding of Fact XII, Tr. 242). (Emphasis ours).

"Employees of stevedoring and ship repair firms and other shore employees ordered to work on the said SS RIVIERA refused to so work while said pickets representing the Sailors' Union of the Pacific were present. Immediately after the removal of said picket line, employees of contractors with whom plaintiff had contracted for the repair and preparation of the vessel to carry her cargo of grain to India resumed work on said vessel as requested. Plaintiff was unable to use its vessel for the period from October 14 through November 26, 1952, and the sole and proximate cause of such loss of use was the said picketing by defendants. (Finding of Fact XIII, Tr. 242).

"As a further proximate result of defendants' said picketing, plaintiff has suffered definite and measurable damage through loss of earnings and the expense of maintaining the SS RIVIERA and the loyal members of its crew during the period October 14, 1952, through November 26, 1952, in the total amount of $38,700.00. (Finding of Fact XVIII, Tr. 244).

"Defendants' said picketing was the sole proximate cause of plaintiff's damages." (Conclusion IV, Tr. 245).

The pertinent portions of the Decrees are set out as Appendices D, E and F.

At the outset of each of the cases petitioners moved the District Court to dismiss on the ground that the court lacked jurisdiction because the Labor-Management Relations Act, 1947, had pre-empted the field. In the

pretrial orders entered in each of the cases, the petitioners also denied the contention that the court had jurisdiction of the subject matter of the suits for the same reason. However, in entering judgment the District Court made a specific finding that it had jurisdiction of the subject matter, and that the respondent has no "remedy under the National Labor Relations Act as amended by the Labor-Management Relations Act, 1947, and the court is not deprived of jurisdiction by the existence of any such remedy." (Tr. 244, 332, 379).

On Appeal to the United States Court of Appeals Specification of Error was made in each case to the finding and conclusion of the District Court that it had jurisdiction and that it was not deprived of jurisdiction by any remedy available under the Labor-Management Relations Act, 1947. This ground was also stated as petitioners' first point upon which they intended to rely on appeal to the Court of Appeals. (Tr. 391).

The Court of Appeals held that the federal labor legislation embodied in the Labor-Management Relations Act of 1947 did not so pre-empt the field as to prevent the exercise of jurisdiction by the District Court, sitting in a diversity case, to enforce the state law. The Court of Appeals was of the opinion that this question was decisively settled by this Court in *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656 (1954). In so holding the Court of Appeals said:

> "The *Laburnum* case thus established as the test of concurrent state jurisdiction, the lack of a substantially similar remedy in the federal scheme of regulation of labor disputes.

> The remedy sought in the cases before us is damages. No such remedy exists under the federal law for this fact siutation. This is not a secondary boycott or a case of an award of back-pay to reinstate employees where money damages may be recovered under federal law. See *Laburnum*, supra, at 665. Under the test enumerated in the *Laburnum* case, therefore, the state court of Oregon and the federal court sitting in a diversity case, clearly have jurisdiction of a common law tort action for damages done by unlawful picketing." (Appendix A p. 27).

Petitioners contend that the Court of Appeals in affirming the judgments for damages herein, ruled contrary to the principles of law announced by this Court in *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 477, 482; *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656, 666-669; *Garner v. Teamsters Union*, 346 U.S. 485, 488; *International Union v. O'Brien*, 339 U.S. 454, 459; *International Union v. Wisconsin Employment Relations Board*, 336 U.S. 245, 253.

In the above cases this court has declared that peaceful picketing in interstate commerce is exclusively governed by the Labor-Management Relations Act, 1947, particularly where a remedy for damages is provided under the Act.

The facts found by the District Court, upon which judgments for damages were predicated in these cases, either constitute labor disputes within the meaning of the Labor-Management Relations Act, 1947, in which a remedy for damages is provided under Section 303 of the Act, or constitute permissive conduct as defined by Section 7 of the Act. Petitioners contend that the de-

termination of the legality of the picketing and the right to damages, if any, must be made under the federal law in the manner provided in Section 303 of the Act. State law cannot be used to determine these issues.

ARGUMENT

The United States Court of Appeals for the Ninth Circuit has decided a federal question in a way in conflict with the applicable decisions of this court. It has affirmed judgments of the federal district court, sitting in diversity cases, awarding damages based upon state law in cases involving peaceful picketing.

In *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656, 74 S. Ct. 833 (1954), this court held that where picketing by a union constituted an unfair labor practice in violation of Section 8 (b) (1) (A) of the Labor-Management Relations Act, 1947, that the state court was empowered to allow damages to the employer based upon the state law because the federal Act did not provide a remedy in damages for this particular conduct. In so holding this court said:

> "To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminnal penalties or liabilities for tortious conduct has been eliminated."

This Court also pointed out in the *Laburnum* case that Section 303 of the Act provides a uniform procedure for the recovery of damages resulting from such unfair labor practices as secondary boycotts.

The Court of Appeals in affirming the judgments of the District Court in the instant cases said:

> "The remedy sought in the cases before us is damages. No such remedy exists under the federal law in this fact situation. This is not a secondary boycott or a case of an award of back pay to reinstated employees where money damages may be recovered under federal law. See *Laburnum*, supra, 665. Under the test ennunciated in the *Laburnum* case, therefore, the state courts of Oregon and the Federal District Court sitting in a diversity case, clearly have jurisdiction of a common law tort action for damages done by unlawful picketing." (Appendix A, page 27).

The "fact situation" of these cases is set out in the Findings and Conclusions of the District Court quoted above (Tr. 241, 327, 374). The cases involved peaceful picketing which either constituted a secondary boycott, which is an unfair labor practice, for which damages may be recovered under Section 303 of the Labor-Management Relations Act, 1947, or it constituted conduct which is protected by Section 7 of the Act.

If the Findings and Conclusions demonstrate that the picketing was intended to prevent the repairing and loading of the SS RIVIERA by inducing and encouraging employees of independent contractors to refuse, in the course of their employment, to perform services on the vessel, with the object of forcing the independent contractors to cease doing business with the shipowner, and to require the shipowner to bargain with the unions to rehire the former crew members, then this would have constituted an unfair labor practice. The shipowner would have had a remedy for damages against the

unions under the provisions of Section 303 of the Act. The Act would prohibit the particular conduct involved and would provide a remedy for damages. The remedy established by the Act would be exclusive, and a state court or a federal district court in a diversity case would not have jurisdiction to award damages under the state law.

On the other hand, if the unions were picketing the vessel for recognition either as representatives of the respondent's employees, or on their own behalf, then such conduct would be protected under Section 7 of the Act. A state court or a federal court in a diversity case cannot award damages for conduct protected by the Federal Act.

Whether the picketing was conduct which was protected by the Act or prohibited by the Act is a question which should be determined under the procedure set up by the Act, and not by a state court or a federal court in a diversity case. *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 75 S. Ct. 480, (1955).

The Court of Appeals also held that the state law may be applied to allow damages in cases of picketing in interstate commerce where the picketing is peaceful and involves no violence.

In the *Laburnum* case, supra, the picketing that was involved was violent and coercive, and in allowing damages under the state law this Court concluded its opinion as follows:

> "If petitioners were unorganized private persons, conducting themselves as petitioners did here, Vir-

ginia would have undoubted jurisdiction of this action against them. The fact that the petitioners are labor organizations, with no contractual relationship with respondent or its employees, provides no reasonable basis for a different conclusion."

Also, in *Weber v. Anheuser-Busch, Inc., supra,* the *Laburnum* case was described as "an action for damages based on violent conduct."

Indeed, the Court of Appeals for the Ninth Circuit had itself held earlier that the *Laburnum* case was limited to situations involving violence and the exercise of police power of the state. In its decision on rehearing in *Born v. Laube,* 213 Fed. (2d) 407 (CA-9 1954) the Court of Appeals said:

> "Moreover, unlike Laburnum, there was no evidence of threat of violence which might serve to bring the cause within the area of Territorial police power."

The Supreme Court of the United States earlier this month handed down a decision in *Auto Workers v. Wisconsin Employment Relations Board,* (Case No. 530 June 4, 1956) which stated:

> "As a general matter we have held that a state may not, in the furtherance of its public policy, enjoin conduct 'which has been made an unfair labor practice under the federal statutes' * * *. But our post Taft-Hartley opinions have made it clear that this general rule does not take from the states power to prevent mass picketing, violence, and overt threats of violence. The dominant interest of the state in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern. Nor should the fact that a union commits a federal unfair labor practice while engaging in

violent conduct, prevent states from taking steps to stop the violence. This conclusion has been explicit in the opinions cited in note 12, supra."

The decision of the Court of Appeals in allowing damages under the state law for peaceful picketing conducted in interstate commerce is in conflict with the applicable decisions of this Court, and particularly the recent decision in *Auto Workers v. Wisconsin Employment Relations Board, supra.*

It is essential that a Writ of Certiorari be granted by this Court in order to determine important questions relating to the construction, interpretation and application of the National Labor Relations Act as amended by the Labor-Management Relations Act, 1947, and specifically to determine whether or not the state court, or a federal court in a diversity case, has jurisdiction to award damages under the state law for peaceful picketing in interstate commerce, where either the peaceful picketing constitutes an unfair labor practice, or conduct protected by the Act.

In *Weber v. Anheauser-Busch, Inc., supra,* this Court, after pointing out that the area of pre-emption in this field was uncertain, said: "This perumbral area can be rendered progressviely clear only by course of litigation." The determination by this Court of the questions involved in the instant cases will clarify important unsettled problems arising under the Labor-Management Relations Act, 1947. See *Isaacson, Federal versus State Jurisdiction,* 42 A.B.A.J. 415.

PRAYER

WHEREFORE your petitioners pray that a Writ of Certioari be issued out of and under the seal of this court directed to the United States Court of Appeals for the Ninth Circuit, commanding said Court to certify and send to this Court a transcript of the record in the above entitled consolidated cases, including also the proceedings in said Court of Appeals, to the end that said causes may be reviewed and determined by this Court, and that the judgments of the Court of Appeals and the judgments of the United States District Court for the District of Oregon be reversed.

WILLIAM BENZ, et al,
M. D. MACRAE, et al,
JEFF MORRISON, et al,

By KNELAND C. TANNER,
RICHARD R. CARNEY,
Counsel for Petitioners,
509 Broadway Building,
Portland 5, Oregon.

APPENDIX A

Opinion of the United States Court of Appeals For the Ninth Circuit

---

These are appeals from judgments awarding damages in three separate suits brought by the appellee, a Panamanian corporation, in the district court. Appellee is the owner and operator of the S. S. Riviera, a vessel of Liberian registry. The appellants, defendants in the several actions below, are citizens of the State of Oregon and of states or counties different from that of the plaintiff. Appellants were sued individually as officers of three voluntary unincorporated labor associations, and also as representatives of classes composed of the members of their respective labor associations.

These cases were before us previously, on appeals from interlocutory injunctions issued against the same appellants to restrain them from picketing appellee's vessel. *Benz v. Compania Naviera Hidalgo, S.A.*, 205 F. 2d 944 (9th Cir. 1953). The vessel had sailed before the case came on for hearing and we accordingly dismissed for moothess, returning the case to the district court for trial of the damage claims. We directed that those claims be prosecuted free from the effects of res judicata arising from the injunctions, and generally "as free from the effects of such injunctions, as if the same had not been issued." Id., at p. 947.

The basic facts are these: The Riviera arrived at the Port of Portland, Oregon, on September 3, 1952. Her

crew were all foreign nationals, chiefly Germans and British, who between March and August, 1952, had signed British articles in Germany, agreeing to work on the ship on a voyage from Bremen, Germany, for a period of two years, and agreeing that British maritime board conditions should apply to their wages, hours of employment and working conditions. About September 9th, the crew entered upon a strike and refused to leave the vessel. They remained on the vessel and on strike until September 26, 1952, when they were required by an order and decree in admiralty issued out of the district court to leave the ship.

The district court found that the company had lived up to all of its obligations under the articles, that the vessel was seaworthy, and that the purpose of the strike was to secure shorter articles and higher wages than those agreed upon. On October 14, 1952, the Sailors' Union of the Pacific, pursuant to resolution duly passed by its members, took up the picketing of the ship, which had been carried out hitherto by the striking crew itself. From October 14th to November 26, 1952, when it was enjoined from further picketing by the district court, the Sailors' Union of the Pacific picketed the vessel for the purpose, as the district court found, of compelling the company to rehire the striking crew members at higher wages, different conditions, and for shorter articles than those agreed upon.

On November 28, 1952, two days after the injunction against the Sailors' Union of the Pacific was issued, another picket line was established at the vessel by Local

90 of the National Organization of Masters, Mates and Pilots. The district court found that the purpose of the picketing was to enforce the demands of the crew and to assist the Sailors' Union of the Pacific in enforcing the demand of that union that the crew be rehired on the conditions and terms demanded. On December 8, 1952, the National Organization of Masters, Mates and Pilots, Local 90, was enjoined from further picketing.

On December 10, 1952, another picket line was established by the Atlantic and Gulf District, Seafarers' International Union, and maintained until restrained by the district court on December 12, 1952. The district court found that the purpose of the picketing by the Atlantic and Gulf District, Seafarers' International Union, was the same as that of the National Organization of Masters, Mates and Pilots, Local 90, that is, to assist the Sailors' Union of the Pacific in enforcing its demand that the striking crew be rehired on different terms than those agreed upon, and to compel the company to meet that demand.

The district court further found that all picketing was at all times peaceful and orderly, that the refusal of shore employees engaged in repair and loading of the vessel to cross the picket lines was directly caused by the picketing of the appellants, and assessed damages in accordance with the number of days' delay caused by each of the appellants respectively.

Appellants' specifications of error, so far as they relate to questions of law, may be grouped under three general categories. It is argued that the district court

erred in concluding that (1) it had jurisdiction to try these damage cases, (2) the acts complained of constituted actionable torts under Oregon law, and (3) that these were proper class suits and that the judgments could be enforced against the assets of unincorporated associations.

(1) The district court's jurisdiction is attacked, first, by reason of the Norris-La Guardia Act's prohibitions against injunctions in labor disputes. See Title 29 U.S.C.A. Secs. 101-114. The appeals before us, however, have nothing to do with the injunctions issued by the district court in the previous litigation between the parties at bar. The Norris-La Guardia Act is not involved in these cases, and is not discussed further.

The district court's jurisdiction is next assailed on the ground that the picketing by the labor associations here involved is with the protection, or alternatively, prohibition of the National Labor Relations Act as amended by the Labor Management Relations Act, 29 U.S.C.A. 141 et seq.

The district court's jurisdiction derived from 28 U.S.C.A. 1332(a)(2). In granting a remedy, it was applying the tort law of Oregon. The question posed, therefore, is whether the reach of the federal labor legislation extends to take exclusive cognizance of the cause, forestalling the exercise of jurisdiction by courts acting as courts of enforcement of state law, and relegating the dispute to the National Labor Relations Board. It may be noted that no party to any of these cases at any time had resort to the Board.

Appellee argues, on the basis of cases holding that the collective bargaining provisions of general labor legislation are not applicable to seamen during the period of valid articles, *Southern Steamship Co. v. NLRB*, 316 U.S. 31 (1942); *Rees v. U. S.*, 95 F. 2d 784 (4th Cir. 1938); *Peninsular & Occidental Steamship Co. v. NLRB*, 98 F. 2d 411 (5th Cir. 1938), that the picketing here undertaken by the labor associations to enforce the demands of a crew of a vessel in violation of their articles is not within the scope of the conduct regulated by the National Labor Relations Act, as amended. Appellee argues further that, regardless of the applicability of general American labor legislation to American maritime labor disputes, Congress did not intend to subject this dispute to the National Labor Relations Act, as amended. This is a dispute between a foreign employer and a foreign crew having signed foreign articles in a foreign port to serve on a foreign ship. The sole points of contact with America in this case are the eruption of the dispute in an American port, and the participation of American labor associations in the dispute by means of picketing.

It may well be that American laws should not be construed to apply, without some more explicit Congressional indication than we are able to find in the National Labor Relations Act, as amended, to situations with as many points of foreign contact as the situation at bar. Cf. *Lauritzen v. Larsen*, 345 U.S. 571 (1953) (Applicability of Jones Act to foreign seamen injured on foreign vessel. See especially the discussion of Mr. Justice Jackson, for the Court, at p. 581 et seq.) The

National Labor Relations Board, furthermore, seems to have taken the position that it has no jurisdiction to determine the collective bargaining agent for the crew of a foreign vessel. *Sailors' Union of the Pacific, Case No. 20 R. C. 809, C.C.H. Labor Reports, 1950-51 N.L.R.B. Decisions, Par. 1,081, May 1, 1950.*

However, it does not seem to us necessary to decide the question whether and to what exent the National Labor Relations Act, as amended, would extend to the controversy before us. The narrow question before us is not whether the National Labor Relations Act, as amended, applies to this dispute at all, but whether it has preempted the field so completely as to bar Oregon from giving a remedy by means of an action in tort for the damage done by the picketing here involved. That question seems to us decisively settled by the Supreme Court in *United Construction Workers v. Laburnum Construction Co.*, 347 U.S. 656 (1954). In that case, damages were sought in a state court for harm done by picketing, including harm done by violent picketing. The Court said, with respect to the union's argument there:

> "They claim that state courts accordingly are excluded not only from enjoining future unfair labor practices and thus colliding with the Board, as occurred in Garner v. Teamster's Union, 346 U.S. 485, but that state courts are excluded also from entertaining common-law tort actions for the recovery of damages caused by such conduct. The latter exclusion is the issue here. In the Garner case, Congress had provided a federal administrative remedy, supplemented by judicial procedure for its enforcement, with which the state injunctive procedure conflicted. Here Congress has neither pro-

vided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct." At 664.

The Court went on to affirm the award of damages in the state court. The *Laburnum* case thus established as the test of concurrent state jurisdiction, the lack of a substantially similar remedy in the federal scheme of regulation of labor disputes.

The remedy sought in the cases before us is damages. No such remedy exists under the federal law for this fact situation. This is not a secondary boycott or a case of an award of back-pay to re-instated employees where money damages may be recovered under federal law. See *Laburnum, supra,* at 665. Under the test enunciated in the *Laburnum* case, therefore, the state courts of Oregon, and the federal district court sitting in a diversity case, clearly have jurisdiction of a common law tort action for damages done by unlawful picketing. Appellants urge upon us the distinction that in the *Laburnum* case the picketing itself was unlawful in the sense that the means used were violent, whereas in the instant case, the means of picketing were peaceful, but the end unlawful. This distinction might have been argued before the *Laburnum* decision. See Cox, *Federalism in Labor Law,* 67 Harv. L. Rev. 1297, 1327 (1954). And an argument much to the same effect was made in the dissenting opinion in the *Laburnum* case. See 347 U.S. 656, at 669-670. But nothing in the opinion of the Court in *Laburnum* suggests an acceptance of that argument, or an intent to restrict its effect to cases of violent picket-

ing, or other tortious means as distinguished from ends. The Court said in that case, at p. 669:

> "If Virginia is denied jurisdiction in this case, it will mean that where the federal preventive administrative procedures are impotent or inadequate, the offenders, by coercion of the type found here, may destroy property without liability for the damage done."

A business may be damaged or destroyed by peaceful picketing as well as by violent picketing. We think that *Laburnum* covers wrongful ends as well as wrongful means.

Appellants have cited *International Brotherhood of Teamsters v. N. Y., New Haven, & Hartford*, Supreme Court, October Term 1955, No. 33, Jan. 9, 1956. But the Supreme Court there granted certiorari only to determine "whether the state court had jurisdiction to enjoin the petitioner's conduct," and not whether the state could grant tort damages after the harmful conduct had occurred. Nothing in that case modifies the rule of the *Laburnum* case as here applied.

(2) The second category of specifications of error relates to the district court's conclusion that the picketing here involved was for an unlawful purpose and therefore an actionable tort under the law of Oregon. Appellants argue that under the law of Oregon picketing is for an unlawful purpose only when it has for its object the commission by an employer of an illegal act in the sense of a violation of law, not merely an act which is held to be against the public policy of the state.

We have examined the cases cited by both briefs and find nothing in them to negative the district court's conclusion that picketing for the purpose of requiring a shipowner to rehire seamen who had struck in violation of their articles is picketing for an unlawful purpose under the law of Oregon. E.g., see *Schwab v. Moving Picture Machine Operators, Local No. 159*, 165 Ore. 602, 109 P. 2d 600 (1941).

Appellants also argue that the damage awards deprived them of their right to free speech; that the refusal of the shore employees to cross appellants' picket lines is wrongful conduct on the part of the shore employees and therefore not to be attributed to the appellants' actions; and that the appellee could not have been damaged during the period of the picketing because it did not have the custody of the vessel for the idleness of which it claimed damages. We do not feel it necessary, after a reading of the record, to discuss these arguments, except to say that they are unfounded.

(3) The third category of specifications of error relates to the propriety of the class suit and the form of the judgment in each of the three cases. The suits were brought against the officers of the labor associations individually and as representatives of the members of the respective associations. So far as these suits are class suits, they were properly brought under Fed. R. Civ. P. 32 (a) (1). The propriety of class suits to sue members of labor unions where those unions may not be sued as separate entities is too well established to require the citation of authority here. Appellants' argument that the

members of the unions did not have sufficiently identical interests to constitute them classes subject to class suits, by reason of the fact that they were not all engaged in the off-shore grain trade, lacks substance. We find no error in permitting the suits as class suits.

The district court entered final decrees against the individual officers served, the members of the associations they respectively represented, as a class, and also against the labor associations as separate entities, directing further that execution be had against the personal assets of the individuals served in the actions, and against the assets of the associations, but not against the personal assets of individuals not served. Appellants specify as error the judgments against the associations and the order to enforce these judgments against their assets.

Rule 17(b) of the Fed. R. Civ. P. provides that the capacity of an unincorporated association to sue and be sued should be determined by the law of the state in which the district court is held, unless the cause of action arises under federal laws. The cause of action here arises under the laws of Oregon. It is conceded that Oregon follows the common law rule that unincorporated associations, like partnerships, may not be sued in their own names. *Cousins v. Taylor*, 115 Or. 472, 239 Pac. 96 (1925); Restatement, *Judgments*, sec. 24, Comment (a).

The question presented, therefore, is whether under Oregon law, although unincorporated associations may not be sued in their names, judgment against their members as classes may nevertheless be enforced against the assets of the associations. At common law, the nature of

tort liability was that of the members severally. See *Speery Products, Inc. v. Association of American Railroads*, 132 F. 2d 408 (2d Cir. 1942), Opinion of Judge L. Hand, at 410. And it was the undoubted proposition that the several liabilities of the members could not be enforced against the assets of the unincorporated associations that led to the adoption of the rule, for the federal courts, of *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344 (1922), in which Chief Justice Taft said:

> " . . . we think that such organizations are suable in the federal courts for their acts, and that funds accumulated to be expended in conducting strikes are subject to execution in suits for torts committed by such unions in strikes." Id. at 391.

The *Coronado* rule was an undoubted modification of the common law as it had developed up to that time. Subsequent to the decision of *Coronado*, the S. Ct. of Oregon decided *Cousins v. Taylor*, 115 Or. 472, 239 Pac. 96 (1925), in which it assumed, as a ground supporting its decision holding the officers of an unincorporated association subject to a suit, that the association itself could not be liable. And as recently as 1953, the Supreme Court of Oregon affirmed that it had "not as yet adopted the rule of the Coronado case . . ." See *Lonsford v. Burton*, 200 Or. 497, 267 P. 2d 208, at 200 Or. 511-512. The *Lonsford* case itself concerned the sufficiency of identity of interest of plaintiffs with other alleged members of a class, so as to entitle plaintiffs to sue as representatives of a class. The Court's dictum there does not suggest that it has modified the common law rule so as to enable

appellee here to enforce its judgments against the assets of the associations. Nor do any other cases in the Oregon courts cited to us suggest any such modification. Appellee cites *Brotherhood of Locomotive Firemen, etc. v. Tunstall,* 163 F. 2d 829 (4th Cir. 1947). That cause of action arose under federal law and is not apposite to the question before us. The Restatement of Judgments, sec. 78, says:

> "Comment: (c) . . . In States in which suit can be maintained against an unincorporated association in its business name, judgment can be rendered which is valid against the assets of the association . . . "

At present, Oregon is not a state in which suit can be maintained against an unincorporated association. It may be that the courts of Oregon will adopt the rule of the *Coronado* case in time, or that the legislature of that State will enact legislation to that effect, but it is not for the federal courts to modify the common law of the state of Oregon. So much of the final decrees in the three cases, therefore, as grant judgment against the unincorporated associations as such and permit execution against their assets, are reversed. The remainders of the three decrees are affirmed. The cases are remanded for entry of decrees consistent with this opinion.

(Endorsed:) Opinion. Filed Apr. 6, 1956.

Paul P. O'Brien, Clerk.

APPENDIX B

Opinion of the United States Court of Appeals For the Ninth Circuit

This is appellee's petition for rehearing.

Appellant's petition for rehearing was denied on May 7, 1956. No issues are presented in appellee's petition which were not heretofore considered by this Court.

It is only the very able opinion of the trial court, urged upon us by the appellee with respect to his chief contention, that prompts us to make further brief comment. Appellee, conceding that the courts of Oregon have not yet adopted the *Coronado** rule, (allowing suits of unincorporated associations as separate entities and execution of judgments against their assets) now argues that the common law distinction between class suits against the members of an association and suits against the associations themselves is a matter of "semantics, not substance." The judgment and order entered below restricted the execution of the judgments to the assets of members of the class served in the action, thus preserving the rights of other members of the class to make their usual defenses, if any, before judgment may be had against them personally and execution may be had against their personal assets. If the assets of the union are indeed the property of the members, to allow execution against those assets would be, to allow execution against the assets of persons not served in the action. Plainly, it is

*United Mine Workers v. Coronado Coal Co., 259 U.S. 344 (1922).

because there is this real difference between the remedies of suit against the members as a class and suit against the association itself, that the *Coronado* rule was adopted in the federal courts, and that appellee now seeks to have this Court subsume under the heading of "semantics" the difference between that rule and the one obtaining in the State of Oregon.

The petition for rehearing is denied.

(Endorsed:) Order on Appellee's Petition for Rehearing. Filed May 21, 1956.

Paul P. O'Brien, Clerk.

APPENDIX C

Opinion of District Court on Consolidated Cases For Damages

August 9, 1954

SOLOMON, Judge.

By stipulation, these three cases were consolidated for trial on plaintiff's claims for damages allegedly arising from the picketing of its vessel, the SS RIVIERA, by defendants.

The background of the controversy, as well as the particular facts out of which these arose, has been described in detail in the opinions which I rendered in connection with plaintiff's applications for interlocutory injunctions,[1] in the Court of Appeals' opinion dismissing the appeals from the orders granting the injunctions,[2] and in prior cases growing out of the same controversy.[3]

By reason of such opinions and the participation of counsel for both plaintiff and defendants in all of such

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[1]Civil No. 6699. Opinion dated November 22, 1952.
Civil No. 6735. Opinion dated December 6, 1952.
Civil No. 6745. Opinion dated December 12, 1952.

[2]205 F. 2d 944.

[3]Compania Naviera Hidalgo, libelant, v. SS RIVIERA, her engines, etc., N. Pedersen, et al. Civil No. 6629. Opinion dated September 25, 1952.

H. Berg et al, libelants and cross-respondents v. SS RIVIERA, her engines, tackle and gear, respondent. Civil No. 6652. (Tr. 456).

Compania Naviera Hidalgo, S.A., claimant and cross-libelant, Compania Naviera Hidalgo, S.A., Owner of the SS Riviera, her engines, etc., libelant, v. Sailors Union of the Pacific et al, respondents. Civil No. 6661. Opinion dated October 22, 1952. (Tr. 456)

cases, no useful purpose will be served to repeat the facts here.

On the issue of damages now before the court, in addition to the agreed facts contained in the pretrial orders, the transcripts of the testimony and the exhibits introduced in evidence in all of the prior proceedings and cases were received in evidence. The only other evidence admitted at the trial related to the damages which plaintiff alleges it suffered as the result of the picketing and such evidence consisted of a few exhibits and the testimony of only one witness, Captain Pangas.

I find that all of the agreed facts set forth in each of the pretrial orders are true.

On the issue of jurisdiction, I find that:

1. The members of each union named as a defendant is each of these three cases have sufficiently identical interests in the subject matter to constitute a class subject to suit by service upon representatives.

2. The individuals named as defendants in each case, by virtue of their positions as members and officers of such union and their interest as defendants in such case, are appropriate and capable persons to represent the interests of all the members of the union.

3. Each of such cases brought by plaintiff is a class action and is appropriate and proper to enable plaintiff to recover damages suffered as the result of picketing by members of the union.

On the issues raised in connection with the merits of each case, I find that Findings of Fact I to IX, in-

clusive heretofore rendered in these cases in connection with the granting of the interlocutory injunctions, are true and correct and I hereby adopt and incorporate in this opinion such findings of fact, except as to the amount of damages suffered by plaintiff.

I further find that the damages sustained by plaintiff in each case were the proximate result of the picketing of the SS RIVIERA by the defendants named in such case. Specifically, I find that the picketing was undertaken for the purpose of preventing plaintiff from repairing and loading the SS RIVIERA and that such picketing effectively prevented the repairing and loading of such vessel; that the failure of employees of independent contractors to cross the picket line did not constitute an independent intervening cause of plaintiff's damage; that the damages sustained by such picketing were not so indefinite and uncertain as to prevent damages from being assessed; and the fact that the vessel was in the technical custody of the United States Marshal during all or a portion of this period did not deprive plaintiff of the opportunity to repair and load the vessel, but such inability was solely caused by the picketing of the vessel by members of the defendant unions.

I find that in case No. 6699 plaintiff was damaged in the amount of $38,700, as a result of the acts of the defendants in such cases, and that plaintiff is entitled to a judgment in that amount.

I find that in case No. 6735 plaintiff was damaged in the amount of $9,000 as the result of the acts of defendants in such case, and that plaintiff is entitled to a judgment in that amount.

I find that in case No. 6745 plaintiff was damaged in the amount of $2,700 as the result of the acts of the defendants in such case, and that plaintiff is entitled to a judgment in that amount.

I further find that the judgment to be entered in each of these cases shall be in favor of plaintiff and against the individually named defendants, each member of the defendant union, and the defendant union itself, but that execution thereon shall be limited to the property of the individually named defendants who were actually served with summons and complaint and against the property of the union, but not against the property of the individual members who were not so served.

COMMENT

Defendants' brief raises four principal contentions:

First, that this court is deprived of jurisdiction because the Taft Hartley Act has pre-empted the field. This same contention was urged at the time I had under consideration the issuance of the interlocutory injunctions. In my opinion dated November 22, 1952, in Civil No. 6699, I stated:

> "It seems clear to me that the Taft-Hartley Act is concerned solely with the labor relations of American workers—between American concerns and their employees in the United States, and it is not intended to, nor does it cover a dispute between a foreign ship and its foreign crew. The National Labor Relations Board has construed the act in the same way. In a petition brought by the Sailors' Union of the Pacific to represent foreign seamen on a ship registered under a foreign flag the National

Labor Relations Board dismissed the petition on the ground that the internal economy of a vessel of a foreign registry and ownership was involved. (Companie Maritima Samsok, Ltd., Sailors' Union of the Pacific A.F.L.) Case Number 20-RC-809 May 1, 1950."

I have carefully examined the argument of defendants on this issue and particularly the statutory provisions and the decisional law. However, nothing therein contained has altered my opinion that these cases are not governed by the provisions of the Labor Management Relations Act (Taft Hartley Act).

Second, that the picketing by the defendant unions was not wrongful. In the opinion to which I have already referred, I have set forth my views and have stated that the object of the picketing in each case was illegal. I do not agree with defendants' contention that picketing is unlawful only in those instances in which a union seeks to require an employer to commit an illegal act. In my view, picketing for an illegal purpose froms a proper basis for the allowance of damages.

Third, that no damages were proximately caused by the picketing but the losses plaintiff suffered were solely due to the refusal of the longshoremen and repairmen to cross the picket line and such wrongful acts constituted independent intervening causes of such losses.

I cannot agree with this contention.

The conduct of the longshormen and the repairmen who refused to cross the picket line was foreseeable; in fact, it was the result which the defendants intended to

accomplish by the picketing. I do not believe that Judge Fee's opinion in *Montgomery Ward & Co. v. Northern Pacific Co. et al* is applicable to a situation of this kind. The most defendants can get from that decision is that the longshoremen and the repairmen might be equally liable with the defendants.

Fourth, defendants' last contention is that any judgment that is rendered in this case should not run against the property of the union itself because a judgment may not be entered against the union as an entity in Oregon.

It is true that, in Oregon, unincorporated labor organizations may not be sued as entities. As recently as October 21, 1953, in the case of *Lonsford et al v. Burton et al* (58 Oregon Advance Sheets No. 6, page 295) Judge Brand stated that the Supreme Court of Oregon "has not yet adopted the rule of the Coronado case" (*United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344). In spite of such statement, the court treated the answers of certain members of an International Union as an answer made on behalf of the International.

However, the fact that an unincorporated union may not be sued as an entity does not mean that a union may not be bound by a judgment rendered in a class action in which some individual members of the union are named and served.

One of the questions considered in *Tunstall v. Brotherhood of Locomotive Firemen & Engineers*, 148 F. 2d 403, was:

> "May a class suit be brought against an unincorporated association in such a way as to bind the association?"

Chief Judge Parker, speaking for the court in that case, answered this question in the affirmative. He discussed Rule 23 of the Federal Rules of Civil Procedure which relates to class actions and found that:

> "The right to bring a class suit to enforce the liability of an unincorporated association existed long prior to the adoption of the Federal Rules of Civil Procedure." (page 404)

He also stated:

> "Even in a state like West Virginia which adheres to the common law rule that an unincorporated labor association may not be sued as an entity, see Milam v. Settle, W. Va., 32 S.E. 2d 269, such an association may be sued in the state courts by naming as parties and serving individually some of the members composing the association. See West v. Baltimore & Ohio R. Co., 103 W. Va. 417. 137 S.E. 654; Simpson v. Grand International Brotherhood of Locomotive Engineers, 83 W. Va. 355, 98 SE, 580."

Defendants do not challenge this holding. In fact they concede:

> "That members of unincorporated labor organizations may be sued for torts through the medium of the class suit."

Having made this concession, I do not understand the logic of their contention that the assets of an unincorporated union, to which all of the members have the right of joint use and enjoyment, may not be reached in a class action brought against all of the members of the union for the acts of the union itself.

In other words, defendants contend that, even though the personal assets of individual members of the union

who were served may be levied upon in this action and even though a judgment rendered against a class may be used as the basis for obtaining judgments against other members of the union who were not served in order that their personal assets may be levied upon, the assets of the union itself which caused the breach which resulted in the judgment may not be reached.

In my view the mere statement of defendants' contention reveals its unsoundness. Even without considering the gross inequity of such result, this contention disregards the nature of a class action. A class action is merely a procedural device that has been traditionally used in some jurisdictions which follow the common law rule that such associations may not be sued as entities. Whichever procedure is followed, the final result is the same.

Counsel for plaintiff in each case shall prepare appropriate findings of fact, conclusions of law, and judgments, all in conformity with this opinion.

APPENDIX D

COMPANIA NAVIERA HIDALGO, S.A., *Plaintiff,*

vs.

WILLIAM BENZ, et al, *Defendants.*

FINAL DECREE

(Omitting Formal Parts)

"It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $38,700.00, together with its costs and disbursements of and from William Benz and Robert Williams, each member of the Sailors' Union of the Pacific, and Sailors' Union of the Pacific, an unincorporated association of seafaring men with its present headquarters in San Francisco, California, and each and all of them; and

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of William Benz and Robert Williams and against any property held by the Sailors' Union of the Pacific, or for the use and benefit of the members of the Sailors' Union of the Pacific, whether held in the name of the association or by others for the association; but execution shall not issue hereon against the individual property of any member of the Sailors' Union of the Pacific, other than those heretofore individually named and made parties herein."

Note: The portion of the Decree which granted Judgment against the unincorporated association as such and permits execution against its assets was reversed by the Court of Appeals; the remaining portions of the Decree were affirmed.

APPENDIX E

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

M. D. MacRAE, et al,

Defendants.

FINAL DECREE

(Omitting Formal Parts)

"It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $9,000.00, together with its costs and disbursements of and from M. D. MacRae, William Caldwell and Viggo Hansen, each member of Local 90, National Organization of Masters, Mates and Pilots, AFL, and Local 90, National Organization of Masters, Mates and Pilots, AFL, an unincorporated association of seafaring men with its present headquarters in San Francisco, California, and each and all of them; and.

It Is Hereby Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of M. D. MacRae, William Caldwell and Viggo Hansen and against any property held by Local 90, National Organization of Masters, Mates and Pilots, AFL, or for the use and benefit of the members of Local 90, National Organization of Masters, Mates and Pilots, AFL, whether held in the name of the association or by others for the association; but execution shall not issue hereon against the individual property

of any member of Local 90, National Organization of Masters, Mates and Pilots, AFL, other than those heretofore individually named and made parties herein."

Note: The portion of the Decree which granted Judgment against the unincorporated association as such and permits execution against its assets was reversed by the Court of Appeals; the remaining portions of the Decree were affirmed.

APPENDIX F

COMPANIA NAVIERA HIDALGO, S.A., *Plaintiff,*

vs.

JEFF MORRISON, et al, *Defendants.*

FINAL DECREE

(Omitting Formal Parts)

"It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $2,700.00, together with its costs and disbursements of and from Jeff Morrison, John Johnson, each member of the Atlantic Gulf District, Seafarers International Union, AFL, and the Atlantic and Gulf District, Seafarers International Union, AFL, an unincorporated association of seafaring men with its West Coast headquarters in San Francisco, California, and each and all of them; and

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of Jeff Morrison and John Johnson and against any property held by the Atlantic and Gulf District, Seafarers International Union, AFL, or for the use and benefit of the members of Atlantic and Gulf District, Seafarers International Union, AFL, whether held in the name of the association or by others for the association; but execution shall not issue hereon against the individual property of any member of the Atlantic and Gulf District, Seafarers International Union, AFL, other than those heretofore individually named and made parties herein."

Note: The portion of the Decree which granted Judgment against the unincorporated association as such and permits execution against its assets was reversed by the Court of Appeals; the remaining portions of the Decree were affirmed.

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In the Supreme Court
of the United States

OCTOBER TERM, 1956
No. 204

WILLIAM BENZ, et al, Individually and as Representatives of All of the Members of the SAILORS' UNION OF THE PACIFIC,

M. D. MacRAE, et al, Individually and as Representatives of All of the Members of Local 90 of the NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL,

JEFF MORRISON, et al, Individually and as Representatives of All of the Members of ATLANTIC AND GULF DISTRICT, SEAFARERS' INTERNATIONAL UNION, AFL,

Petitioners,

vs.

COMPANIA NAVIERA HIDALGO, S. A., a corporation,

Respondent.

PETITIONERS' REPLY BRIEF

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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STEVENS-NESS PORTLAND, ORE.

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In the Supreme Court
of the United States

OCTOBER TERM, 1956
No. 204

WILLIAM BENZ, et al, Individually and as Representatives of All of the Members of the SAILORS' UNION OF THE PACIFIC,

M. D. MacRAE, et al, Individually and as Representatives of All of the Members of Local 90 of the NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL,

JEFF MORRISON, et al, Individually and as Representatives of All of the Members of ATLANTIC AND GULF DISTRICT, SEAFARERS' INTERNATIONAL UNION, AFL,

Petitioners,

vs.

COMPANIA NAVIERA HIDALGO, S. A., a corporation,

Respondent.

PETITIONERS' REPLY BRIEF

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

QUESTIONS PRESENTED

The respondent in its brief in opposition to the Petition for Writ of Certiorari did not attempt to answer our argument on the pre-emption by the Labor Manage-

ment Relations Act of 1947 of the jurisdiction of the court below to award damages for peaceful picketing under the State law. It contends, however, that the Act does not apply to the instant cases because either the general maritime law or foreign law is controlling. We shall answer these contentions separately.

ARGUMENT

I. The Federal Labor Law Rather Than the Maritime Law Governs Picketing on the Shore by Persons Who Are Not Members of the Crew of the Vessel.

To support its argument that the maritime law applies in the instant cases rather than the federal labor law the respondent asserts that the original crew members were still under Articles with the vessel. However, the record is clear that the crew had been discharged (Tr. 241). The crew had been removed from the vessel on September 26, 1952 (Tr. 241). They had been jailed by the Immigration authorities and were still in custody and had been ordered deported (Tr. 18). They had filed a libel against the vessel for the collection of their wages (Tr. 19). The respondent was not attempting to operate is vessel, and the picketing for which damages were awarded in these cases did not begin until about three weeks later, on October 14, 1952 (Tr. 241).

The respondent has not cited any case in which either an injunction was issued or damages allowed on account of picketing of a vessel by a union representing crew members who had been discharged.

Rees v. U. S., 95 F2d 784, relied upon by the respondent, was a criminal case brought under the mutiny statutes of the United States, It involved only the criminal liability of the crew members for their refusal to work while under Articles. It did not involve the tort liability of persons who were not crew members who picketed the vessel.

Also, it is important to note that in the *Rees* case and the other cases relied upon by th respondent, the courts in discussing the duties of seamen under Articles on American vessels are careful to point out that the seamen's duties are predicated upon the rights and protection which they receive under the American law. In the *Rees* case the court said:

> "The laws of the United States concerning seamen, their rights and their treatment, are more liberal and more favorable to the seamen than the laws of any other country. Great care has been taken by Congress to safeguard their rights and protect them from injustice."

In the instant cases, however, the vessel involved was registered under the flag of Liberia and we are not advised by pleading or proof of the Liberian law with respect to Articles or mutiny.

The respondent has cited *Southern Steamship Co. v. NLRB*, 316 U.S. 31, 86 L. Ed. 1246, 62 S. Ct. 886, and *Peninsular & Occidental Steamship Co. v. NLRB*, 98 F2d 911, for the proposition that although a shipowner is guilty of an unfair labor practice in discharging striking crew members, that the striking crew members nevertheless should not be reinstated to their jobs.

Such was not the holding in the *Peninsular & Occidental Steamship Co.* case. The court specifically held that the crew members who were under Articles and who "refused to do any work, went on a sit-down strike, took possession of the ship, * * *" were discharged "on account of threats of sabotage etc. and not on account of union membership or activity, there was no unfair labor practice." There was no reinstatement, therefore, because there was no unfair labor practice. The court said:

> "It is not a case in which there had been a strike and the employer had declined to re-employ some of the strikers * * *."

In the *Southern Steamship Co.* case this court held that the crew members who went on strike while under Articles committed mutiny under the laws of the United States. The court then concluded as follows:

> "Consequently and despite the initial unfair labor practice which caused the strike we hold that the reinstatement provisions of the order exceeded the Board's authority to make such requirements 'as will effectuate the policies of the Act [this Chapter].'"

This court went on, however, to make it clear that notwithstanding this decision, the Union could have, and should have, taken such measures as were available to it in furtherance of its labor dispute with the shipowner, so long as the action taken did not in itself violate the maritime law. The court said:

> "It should be stressed that the view we have taken does not prevent the redress of grievances under the Act. At any time following the certification of the N.M.U. in January, 1938, the union and the Board could have secured the assistance of the

courts in forcing petitioner to bargain. The importance of seeking such assistance promptly is strikingly illustrated in this case. Had the union and the Board done so, the unfortunate occurrence at Houston might have been averted. *And what is more, nothing that we have said would prevent the union from striking, picketing or resorting to any other means of self-help, so long as the time and place it chooses do not come within the express prohibition of Congress.*" (Emphasis ours) (316 U.S. at 48, 62 S. Ct. at 895)

This court was, of course, referring to the right of a union to picket a vessel although the crew of the vessel may be under Articles and unable to go on strike without being guilty of mutiny. If such picketing is lawful under the labor it will not be restrained nor be considered tortious merely because a shipowner or a vessel is involved, so long as the crew members who are under Articles do not violate the terms of their Articles or commit any act declared unlawful by the maritime law. Such picketing was declared lawful in *Matson Navigation Co. v. Seafarers' International Union*, 100 Fed Supp 730 (1951 DC Md).

The picketing in the instant cases was not in violation of the maritime law but was conducted by non-crew members on the dock. It was not begun until about three weeks after the crew members had been discharged and had left the vessel. The picketing could not have precipitated a violation of the maritime law, because neither the unions nor the persons they represented were at the time of the picketing under Articles, nor serving under the jurisdiction of the maritime law.

II. The Application of the National Labor Relations Act as Amended to Picketing by American Unions of a Foreign Vessel.

The respondent contends that the Labor Management Relations Act is inapplicable to this case because of the "foreign nature of the dispute." The respondent stresses the fact that the employer is a foreigner operating a foreign-flag vessel, which has employed alien seamen. The respondent fails to point out, however, that it was admitted in these cases that the foreign ship owner was engaged in the carriage of grain between ports of the United States and the Orient and that the American unions had an economic interest in the working conditions of the seamen employed aboard vessels engaged in that trade (Tr. 243).

Although respondent concedes that "Congress must be presumed to intend to limit labor legislation to the 'territorial jurisdiction' of the United States," nevertheless respondent insists that the provisions of the National Labor Relations Act do not apply to these actions for damages for picketing conducted by the petitioners ashore in the United States.

If it is assumed for the purpose of argument that the National Labor Relations Board has ruled that it lacks jurisdiction to interfere in the internal economy of a foreign vessel by holding a representation election aboard the vessel, it does not follow that the provisions of the Act are not applicable to picketing conducted by American Unions on the dock. Indeed the National Labor Relations Board exercised jurisdiction with respect to picketing of the very same foreign vessel in-

volved in the case referred to by the respondent. *Sailors' Union of the Pacific AFL and Moore Dry Dock Co.*, 92 NLRB 547, 27 LRRM 1108 (1950).

It was also held in *Norris Grain Co. v. Seafarers' International Union*, 232 Minn. 91, 46 N.W. 2d 94, 26 LRRM 2587 (1950), that the remedy under the National Labor Relations Act was exclusive, where a Canadian vessel with a Canadian crew was picketed at a Minnesota dock.

These decisions are in keeping with the definition of "commerce" in the National Labor Relations Act which includes commerce "between any foreign country and any state." 29 USCA Sec. 152 (6).

Very recently this court in *Local Union No. 25 v. New York, New Haven & H. R. Co.*, U.S. , 76 S. Ct. 227 (1956), held that the fact that a railroad was expressly excluded from the terms of the National Labor Relations Act did not prevent the railroad from seeking relief through the National Labor Relations Board from picketing by a trucking union which constituted a secondary boycott in violation of Section 8 (b) (4) (A) of the National Labor Relations Act. The court said:

> "The N.L.R.B. is empowered to issue complaints whenever 'it is charged' that any person subject to the Act is engaged in any proscribed unfair labor practice. Sec. 10 (b). Under the Board's Rules and Regulations such a charge may be filed by 'any person'. * * * Furthermore, since railroads are not excluded from the Act's definition of 'person', they are entitled to Board protection from the kind of unfair labor practice proscribed by Sec. 8 (b) (4) (A)."

The instant cases involve actions for damages on account of picketing. The picketing was either protected or prohibited by the provisions of the Labor Management Relations Act. If the picketing was prohibited by the terms of the Act, a remedy in damages and a procedure for the recovery of damages is provided for under the Act. Title 29 USCA Sec 187.

Subsection (b) of that section provides in part as follows:

> "Whosoever shall be injured in his business or property by reason of any violation of sub-section (a) of this section may sue therefor * * * and shall recover the damages by him sustained. * * *."

The Labor Management Relations Act does not limit the remedy to damages to persons subject to the Act, but allows damages to "Whosoever shall be injured. * * *." The alleged damages were due to picketing conducted on American soil by members of American unions. The American unions and their members were clearly subject to the Act. The foreign shipowner could and should have pursued its remedies pursuant to the terms of the Act.

The fallacy of respondent's contention that the Labor Management Relations Act does not apply to these cases because of the foreign nature of the dispute is readily demonstrated by determining which law is applicable, assuming that the dispute involves "a contract of employment between an alien employer and alien employees to be wholly performed aboard a foreign vessel." Clearly such a dispute involving internal discipline aboard a ship is governed by the law of the

flag of the vessel. See *Lauritzen v. Larsen*, 345 U.S. 571, 73 S. Ct. 921, 87 L. Ed. 1254 (1953). This would be particularly true in the instant case because of the existence of a treaty between the governments of the United States and Liberia which provided that the Consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country. 54 Stat. 1751. See Appendix A. It has also been held in a number of cases that where such internal disputes arise, the Consul has exclusive jurisdiction over the controversy and the courts are without jurisdiction except to aid the Consul. See *The WIND*, 22 F. Supp. 883; *Petition of Georgakopoulos*, 81 F. Supp. 411, 175 F2d 730 (1949).

The remedy allowed by the court below in damages against the petitioners was based upon the law of the State of Oregon. The fact that the respondent shipowner was a foreigner can certainly be no ground upon which to allow recovery under State rather than Federal law. The foreign aspect of the dispute might invite a choice of foreign law but could not govern a choice between State and Federal law.

Respectfully submitted,

KNELAND C. TANNER,
RICHARD R. CARNEY,
Counsel for Petitioners.

APPENDIX A

Article 10 of the Treaty, entered into in 1939 (54 Stat. 1751) reads as follows:

"A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto, provided, however, that such jurisdiction shall not exclude the jurisdiction conferred on local authorities under existing or future laws.

"When an act committed on board of a private vessel under the flag of the State by which the consular officer has been appointed and within the territorial waters of the State to which he has been appointed constitutes a crime according to the laws of that State, subjecting the person guilty thereof to punishment as a criminal, the consular officer shall not exercise jurisdiction except insofar as he is permitted to do so by the local law.

"A consular officer may freely invoke the assistance of the local police authorities in any matters pertaining to the maintenance of internal order on board of a vessel under the flag of his country within the territorial waters of the State to which he is appointed, and upon such a request the requisite assistance shall be given.

"A consular officer may appear with the officers and crews of vessels under the flag of his country before the judicial authorities of the State to which he is appointed for the purpose of observing the proceeding or of rendering assistance as an interpreter or agent."

SUPREME COURT, U.S.
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In the Supreme Court of the United States

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Respondent.

BRIEF FOR THE PETITIONERS

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OPINION BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 233 F2d 62.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was entered April 6, 1956 (R. 490). The Petition for Writ of Certiorari was filed June 27, 1956, and was granted November 5, 1956. The jurisdiction of this court rests on 28 USCA 1254 (1), 62 Stat. 928.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the United States Constitution are involved herein:

(1) Article I, Section 8, Clause 3:

> "The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. * * *"

(2) Article VI, Clause 2:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The following Statutes are involved herein:

(1) Section 7 of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 140, 29 USCA Section 157:

> "Employees shall have the right to self-organiza-

tion, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

(2) Section (8) (b) (4) of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 141, 29 USCA Section 158 (b) (4):

"It shall be an unfair labor practice for a labor organization or its agents * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an obect thereof is: (A) forcing or requiring employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees under the provisions of section 159

of this title; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter. * * *"

(3) Section 301 (b) of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 156, 29 USCA Section 185 (b):

"Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

(4) Section 303 of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 158, 29 USCA Section 187:

"(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title. * * *

(b) Whosoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties and shall recover the damages by him sustained and the costs of the suit."

QUESTIONS PRESENTED

The Court of Appeals for the Ninth Circuit has affirmed judgments of the District Court of Oregon entered in diversity cases awarding damages on account

of peaceful picketing in interstate and foreign commerce in actions based upon complaints praying for injunctions and seeking damages under the laws of the State of Oregon. The questions presented are:

1. Whether the Labor-Management Relations Act, 1947, deprives a state court or federal court in a diversity case of jurisdiction to hear and determine a controversy involving damages for peaceful picketing by a union in interstate commerce when such conduct constitutes either:

(a) An "unfair labor practice" for which a remedy in damages is available under the Act, or

(b) Protected activity under Section 7 of the Act.

2. Whether the remedy for damages provided for in the Labor-Management Relations Act, 1947, constitutes the exclusive remedy for damages on account of peaceful picketing in interstate commerce.

3. Whether the Labor-Management Relations Act, 1947, has preempted the field so as to prevent a federal court, sitting in a diversity case, of jurisdiction to award damages under the state law for peaceful picketing of a ship by an uncertified union to induce employees of neutral independent contractors to refuse in the course of their employment to work on the ship as ordered by their employers, where the object as found by the trial court was to force the independent contractors to cease doing business with the shipowner in repairing and loading the ship for the purpose of requiring the shipowner to re-employ the crew it had previously discharged from jobs which were then open on the ship.

STATEMENT OF THE CASE

The three cases which are consolidated in this petition were brought by a shipowner seeking an injunction and damages, under state law, for the loss of the use of its vessel, caused by peaceful picketing conducted by the petitioners, who are individuals, and as individuals and representatives of a class composed of certain maritime labor unions.

The respondent is a Panamanian corporation and the owner of the SS RIVIERA, a Liberian flag vessel, which was engaged as a tramp steamer carrying cargoes of grain by charter from ports of the United States to ports in the Orient. The petitioners are individuals and officers of three voluntary unincorporated labor unions. The unions represent seamen employed aboard vessels carrying grain between ports of the United States and ports in the Orient. The unions and their members have an economic interest in the wages, hours and working conditions existing aboard vessels engaged in that trade. (R. 20.)

The essential facts involved in this case are best described by the following time table of events:

1952 March	The SS RIVIERA at Bremen, Germany, hired a crew under articles for a period of two years, or until return to a European port. (R. 15.)
Apr. 19	The SS RIVIERA departed from New Orleans, Louisiana, for India, loaded with a cargo of grain on charter under the Aid to India Act. (R. 16, 146.)

July — The SS RIVIERA loaded stores of fresh and frozen foods consisting of low-grade meat, 50% of which was not fit for human consumption. (R. 121, 48, 182.)

Aug. — Members of the crew of the SS RIVIERA made complaints to the Master concerning the food. (R. 49, 136.)

Sept. 3 — The SS RIVIERA arrived at Portland, Oregon, after a voyage from India by way of Japan, made in part by the crew hired in March at Bremen, Germany, and in part by new crew members hired at intervening ports. (R. 16.)

Sept. 9 — About three days before the ship was scheduled to depart, the crew of the SS RIVIERA ceased working on the vessel, went on strike, and were discharged. (R. 17, 125, 148, 241.)

Sept. 15 — The crew members signed cards requesting the Sailors' Union of the Pacific to act as their collective bargaining agent, which proposed agency was not accepted until October 14, 1952. (R. 17.)

Sept. 18 — The respondent brought a possessory libel suit in the District Court in Admiralty to remove the crew that had been discharged from the vessel and the vessel was libeled by the Marshal. (R. 17.)

Sept. 25 — The District Court made and entered its decree in the possessory libel suit ordering the discharged crew members to leave the vessel. (R. 17.)

Sept. 26 — The crew members left the vessel and were held in custody by the Immigration Service. They were ordered deported but the Immigration Service was willing to allow voluntary departure if they were re-employed

aboard the SS RIVIERA. (R. 18, 241). The SS RIVIERA was without a crew hired to work aboard the vessel until December 20, 1952. (R. 21.)

Oct. 3 The SS RIVIERA was libeled by the discharged crew members for collection of their wages. (R. 19, 420.) Although the District Court found the vessel seaworthy, it entered Findings and a Decree awarding the crewmen their wages. (Pretrial Exs. 17, 18, R. 432, 442.)

Oct. 9 The respondent filed a "libel" against the Sailors' Union of the Pacific for damages alleging that the Sailors' Union induced the crew members of the vessel to go on strike. (R. 19, Pretrial Ex. 19, R. 445.) On December 6, 1952, the District Court made and entered Findings and Conclusions and entered a Decree dismissing respondent's libel for damages against the Sailors' Union of the Pacific and specifically held that the Sailors' Union of the Pacific did not induce the crew members to go on strike. (Pretrial Exs. 21, 22, 451, 455.)

Oct. 14 The Sailors' Union of the Pacific, acting pursuant to a resolution adopted by the Union, commenced peaceful picketing of the SS RIVIERA, which picketing continued until enjoined by the District Court on November 26, 1952. (R. 18; Pretrial Ex. 14, R. 415). The employees of independent contractors engaged in stevedoring and ship repair work refused to cross the picket line although requested to do so by their employers. (R. 19.)

Oct. 28 The first of the three cases at bar was filed by the respondent against the petitioners in

the District Court for an injunction and damages. (Pretrial Ex. 86; R. 481.)

Nov. 28 The SS RIVIERA was peacefully picketed by the National Organization of Masters, Mates and Pilots, Local 90, which picketing continued until restrained by the District Court on December 8, 1952. (R. 328.)

Dec. 10 The SS RIVIERA was peacefully picketed by Atlantic and Gulf District, Seafarers' International Union until December 12, 1952, when the picketing was enjoined by the District Court. (R. 350.)

In reviewing the time table of events set out above, it is important to note that the District Court found that the Sailors' Union of the Pacific did not induce the crew to go on strike. Also the picketing for which damages were awarded in these cases did not begin until more than a month after the crew of the vessel had been discharged. (R. 241.) During all of the period of the picketing, and for a period of three weeks prior to the picketing, the SS RIVIERA was without a crew employed on board and there were approximately twenty-five jobs open for seamen on the vessel. (R. 21.)

It was admitted, and the court found, that the picketing "was at all times conducted in a peaceful manner and without any violence." (R. 18.) The employees of independent contractors engaged in stevedoring and ship repair work on the vessel refused to cross the picket line, although they were ordered to do so by their employers. The SS RIVIERA was therefore unable to be repaired and loaded and it lay idle during the picketing.

The cases at bar were brought separately in the District Court by the respondent as common law actions for injunctions and for damages for the loss of the use of its vessel from October 14, 1952, when the Sailors' Union of the Pacific began picketing, until December 12, 1952, when the picketing ceased in obedience to the District Court injunctions. The respondent predicated its cases upon the common law of Oregon on the theory that the picketing was for the "unlawful purpose" of requiring the respondent to rehire its former crew members who went on strike, had been discharged, put off the ship, and who were confined in jail.

The jurisdiction of the District Court was based upon diversity of citizenship and the amount involved. 28 USCA Sec. 1332 (a) (2), 62 Stat. 869.

The District Court allowed temporary injunctions and appeals were taken to the United States Court of Appeals for the Ninth Circuit, but were dismissed on the ground that the injunctions were moot because the vessel had departed. *Benz, et al v. Compania Naviera Hidalgo,* 205 F2d 944, cert. denied 346 U.S. 885. The cases were remanded to the District Court to be tried on the issue of damages as if the injunctions had not been issued. The cases were tried in the District Court without a jury. The District Court made the following Finding of Fact:

> *"Said picketing by members of the Sailors' Union of the Pacific was intended to prevent the repairing and loading of the SS RIVIERA;* and the sole purpose of said picketing by the members of the Sailors'

Union of the Pacific was to compel the plaintiff to re-employ the said discharged, striking members of the crew of the SS RIVIERA for a shorter period than that stated in the articles, and at wage rates and other conditions more favorable to them than those stated in said articles." (Finding of Fact XII, R. 242.) (Emphasis ours.)

Among the Conclusions of Law made by the District Court were the following:

"The Court has jurisdiction of the subject matter. Plaintiff has no administrative remedy under the National Labor Relations Act as amended by the Labor-Management Relations Act of 1947, and the Court is not deprived of jurisdiction by the existence of any such remedy. (Conclusion I, R. 244.)

"Defendants' said picketing was for an unlawful purpose. There was no labor dispute between plaintiff and defendants or the Sailors' Union of the Pacific. * * * (Conclusion III, R. 245.)

The District Court then concluded that "the picketing was the sole proximate cause of the plaintiff's damages" and awarded a judgment for damages against the petitioners. (R. 246.)

In rendering its opinion in these cases the District Court said the following concerning the question of federalism or preemption:

"Defendants' brief raises four principal contentions:

First, that this court is deprived of jurisdiction because the Taft-Hartley Act has pre-empted the field. This same contention was urged at the time

I had under consideration the issuance of the interlocutory injunctions. In my opinion dated November 22, 1952, in Civil No. 6699, I stated:

> 'It seems clear to me that the Taft-Hartley Act is concerned solely with the labor relations of American workers—between American concerns and their employees in the United States, and it is not intended to, nor does it cover a dispute between a foreign ship and its foreign crew. The National Labor Relations Board has construed the Act in the same way. In a petition brought by the Sailors' Union of the Pacific to represent foreign seamen on a ship registered under a foreign flag the National Labor Relations Board dismissed the petition on the ground that the internal economy of a vessel of a foreign registry and ownership was involved. (Companie Maritima Samsoc, Ltd., Sailors' Union of the Pacific, A.F.L.) Case Number 20-C-809 May 1, 1950.'

I have carefully examined the argument of defendants on this issue and particularly the statutory provisions and the decisional law. However, nothing therein contained has altered my opinion that these cases are not governed by the provisions of the Labor-Management Relations Act. (Taft-Hartley Act.) (Pet. for Cert. p. 38.)"

Upon appeal to the United States Court of Appeals, specification of error was made in each case to the District Court's holding that it was not deprived of jurisdiction to grant a remedy in damages under the law of Oregon for peaceful picketing notwithstanding the provisions of the Labor-Management Relations Act, 1947. The Court of Appeals in affirming the judgments, said:

> "That question seems to us decisively settled by the Supreme Court in United Construction Workers v. Laburnum Construction Co., 347 U.S. 656 (1954)."

The Court of Appeals, after quoting from *Laburnum*, concluded as follows:

> "The remedy sought in the cases before us is damages. No such remedy exists under the federal law for this fact situation. This is not a secondary boycott or a case of an award of back-pay to reinstated employees where money damages may be recovered under federal law. See *Laburnum, supra*, at 665. Under the test enunciated in the *Laburnum* case, therefore, the state courts of Oregon, and the federal district court sitting in a diversity case, clearly have jurisdiction of a common law tort action for damages done by unlawful picketing. * * *"

As we shall point out in our argument herein, the District Court was deprived of jurisdiction to determine the controversy and to enter the judgments for damages on account of peaceful picketing in interstate commerce.

SUMMARY OF ARGUMENT

The Labor-Management Relations Act, 1947, has preempted the state's power to give a remedy by means of an action for tort damages on account of the peaceful picketing involved in these cases. The fact situation reasonably brings the controversy either within the provisions of the Act defining "unfair labor practices" for which a remedy in damages is allowed under the Act, or the controversy is within the protection afforded by the Act in Section 7. The conduct of the petitioners in picketing

the respondent's vessel involved no violence; but was a peaceful exercise of economic pressure in a labor dispute in interstate commerce. If the picketing should be determined to be secondary in its nature in that it induced the employees of independent contractors to cease doing business with the respondent, the conduct might fall within the provisions of the Act defining unfair labor practices for which a remedy in damages is available under Section 303 of the Act.

On the other hand, should the picketing be found to be an exercise of rights guaranteed by Section 7 of the Act, the state would be powerless to award damages for such conduct.

In any event the determinations of the controversy should be before the tribunal prescribed in the Act. If the respondent is entitled to any damages its complaint should have been framed under Section 303 of the Act in order that the petitioners could put into issue the question of whether or not the conduct was either protected or prohibited by the Act.

The Act under the circumstances in this case has preempted the field and the State of Oregon is barred from giving a remedy for damages for the peaceful picketing carried on by the petitioners.

The fact that the respondent is a foreign corporation operating a foreign flag vessel should not alter the decision with respect to preemption. The damages sought are for picketing conducted on American soil by Americans. The

fact that the party claiming to be damaged by the picketing is a foreigner is no criterion for a choice between state and federal law. It is on the contrary all the more reason why the choice should be federal law, since it is the purpose of the Act to govern interstate and foreign commerce.

Also the fact that the respondent's employees were seamen should not alter the decision with respect to preemption. The respondent's former crew members had been discharged more than a month prior to the picketing for which damages are sought in these cases. The picketing was not carried on by crew members under articles. It involved no mutiny or desertion, nor other violation of maritime law.

ARGUMENT

I.

A State is Deprived of Jurisdition to Award Damages for Peaceful Picketing in Interstate Commerce by the Preemption of the Field by the Labor-Management Relations Act, 1947.

The principal question raised in these cases is whether the National Labor Relations Act, as amended, has preempted the field so as to bar the State of Oregon from giving a remedy by means of an action in tort for damages on account of the peaceful picketing involved in these cases.

The fundamental concept of constitutional law upon

which the solution of this question rests was succinctly stated as follows in the last term by the Court as follows:

> "By virtue of the Commerce Clause, art. 1, Sec. 8, cl. 3, Congress has power to regulate all labor controversies in or affecting interstate commerce, such as are here involved. If the congressional enactment occupies the field, its control by the Supremacy Clause, art. 6, cl. 2, supersedes or, in the current phrase, pre-empts state power." *United Automobile A & A. I. W. v. Wisconsin Emp. Rel. Bd.*, 351 U.S. 266, 271; 76 S. Ct. 794, 797 (1956).

The Court has many times dealt with the problem of the relationship between state and federal jurisdiction concerning labor relations. In *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 75 S. Ct. 480, 99 L. Ed 546 (1955) this Court summarized its previous decisions on the subject of federalism in labor relations, and classified them under four separate headings, depending upon the conduct involved, and the remedy afforded.

In the first three classifications were grouped the following cases where the conduct involved and the remedy afforded were such that they were exclusively governed by the federal law and its procedure:

1. "A State may not prohibit the exercise of rights which the federal Acts protect."

   (a) *Hill v. State of Florida ex rel Watson*, 325 U.S. 538, 65 S. Ct. 1373, 1375, 89 L. Ed. 1782. (State could not impose prerequisites to "federally established right to collective bargaining.")

   (b) *International Union v. O'Brien*, 339 U.S. 454, 70 S. Ct. 781, 94 L. Ed. 978. (State's strike-

vote provisions contrary to Section 7 of Taft-Hartley Act.)

(c) *Amalgamated Asso. etc. v. Wisconsin Employment Relations Board,* 340 U.S. 383, 71 S. Ct. 359, 95 L. Ed. 364. (State Public Utility law contrary to Section 7 of the Taft-Hartley Act.)

(d) *Garner v. Teamsters Union,* 346 U.S. 485, 499, 74 S. Ct. 161, 170, 98 L. Ed. 228. (Federal restraint in specified types of picketing implies other picketing is protected conduct.)

2. "A State may not enjoin under its own labor statute conduct which has been made an 'unfair labor practice' under the federal statute."

(a) *Garner v. Teamsters Union, supra:* (State cannot enjoin union from federal unfair labor practice where federal Act gives the remedy for an injunction.)

(b) *Plankinton Packing Co. v. Wisconsin E. R. Board,* 338 U.S. 953, 70 S. Ct. 491. (State cannot enjoin employer's commission of federal unfair labor practice where federal Act affords a remedy.)

(c) *Building Trades Council v. Kinard Construction Co.,* 346 U.S. 933, 74 S. Ct. 373, 98 L. Ed. 423. (State cannot afford a remedy which is available under the federal Act.)

(d) *Capital Service, Inc. v. Labor Board,* 347 U.S. 501, 74 S. Ct. 699, 98 L. Ed. 887. (State court cannot enjoin a union's commission of an unfair labor practice where the Board can give a remedy by injunction.)

3. "The Federal Board's machinery for dealing with certification problems also carries implications of exclusiveness."

(a) *La Crosse Telephone Corp. v. Wisconsin E. R. Board,* 336 U.S. 18, 69 S. Ct. 379, 93 L. Ed. 463. (State may not certify union as collective bargaining agent where federal Board procedure is available.)

(b) *Bethlehem Steel Co. v. New York State Labor Relations Board,* 330 U.S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234. (State may not certify even if federal Board has refused certification.)

In the Fourth classification adopted by the Court were grouped the following cases where the state's exercise of jurisdiction was found "not to have been exclusively absorbed by the federal enactments." The conduct involved in this group of cases was said to be "not subject to regulation by the federal Board, either by prohibition or by protection:"

(a) *Allen-Bradley Local v. Wisconsin E. R. Board,* 315 U.S. 740, 62 S. Ct. 820, 86 L. Ed. 1154. (State was allowed to enjoin violent picketing.)

(b) *International Union, etc. v. Wisconsin E. R. Board,* 336 U.S. 245, 69 S. Ct. 516, 93 L. Ed. 651. (Recurrent unannounced work stoppage enjoined by the state.)

(c) *Algoma Plywood & Veneer Co. v. Wisconsin E. R. Board,* 336 U.S. 301, 69 S. Ct. 584, 93 L. Ed. 691. (State allowed to forbid enforcement of maintenance of membership clause.)

(d) *United Construction Workers v. Laburnum Construction Corp.,* 347 U.S. 656, 74 S. Ct. 833, 98 L. Ed. 1025. (An action for damages based on violent picketing and no compensatory relief available under the federal Act.)

The Court did not place the *Weber* case under any of

the foregoing categories, but in effect created a new group of cases to be exclusively governed by the federal law when the conduct comes within the following rule:

> "But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance." *Weber, supra,* p. 481.

The *Weber* case made it clear that in determining the line between state and federal jurisdiction, it is not necessary to determine whether the conduct involved consists of an unfair labor practice or whether it is conduct within the protection of Section 7 of the Taft-Hartley Act. The Court said:

> "The point is rather that the Board, and not the State court, is empowered to pass upon such issues in the first instance."

Following shortly after, the Court handed down its *per curiam* opinion in *General Drivers v. American Tobacco Co.*, 348 U.S. 978, 75 S. Ct. 569 (1955) where an injunction issued by the state court of Kentucky enjoining drivers from refusing to cross a picket line set up by another striking union was struck down. The court's opinion was based upon the *Weber* case and the *Amalgamated* case.

The next case to come before the Court was *Local Union No. 25 v. New York, New Haven & Hartford R. R. Co.*, 350 U.S. 155, 76 St. Ct. 227 (1956). There the Teamster's Union picketed the railroad where trailers for "piggy-back" hauling were to be loaded. The court, after holding that the railroad could avail itself of the processes of the National Labor Relations Board notwithstanding its exemption by the provisions of the Railway Labor Act, went on to strike down the permanent injunction granted by the state court. Upon the authority of the *Weber* case it was held that it was for the Board to determine whether or not the conduct was prohibited by Section 8 of the Act, or whether it was protected by Section 7 of the Act. In making this holding the court quoted the portion of the decision in the *Weber* case which we have set out above. It therefore appears that this latter case falls within the new group of cases established by the decision in the *Weber* case.

The next case to come before the Court was *United Mine Workers v. Arkansas Oak Flooring Co.*, 351 U.S. 62, 76 S. Ct. 559 (1956). The union represented a majority of the employees at the respondent's plant. The union's officers had not filed with the Board their non-Communistic affidavits nor certain financial information described in Section 9 of the Act. When the company refused to recognize the union, the employees went on strike and placed a peaceful picket line in front of the employer's plant. The court ruled that the failure to file the organizational and financial data and the non-Communistic affidavits did not excuse the company from recognizing

the union. The court went on to hold that the controversy was governed by the federal Act and that the State court erred in issuing an injunction enjoining the peaceful picketing. The court specifically classified the case with the cases under Group No. 1 as described in the *Weber* case, which are governed by the rule that "A State may not prohibit the exercise of rights which the federal Acts protect."

In *United Auto Workers v. Wisconsin E. R. Board*, 351 U.S. 266, 76 S. Ct. 794 (1956), again the Court was called upon to rule on a case involving the interplay of state and federal jurisdiction in labor relations. In that case the union called a strike at the employer's plant when they were unable to agree upon a new contract. The picketing which was carried on pursuant to the strike involved many kinds of violence. The employer petitioned the Wisconsin Employment Relations Board for an injunction under the Wisconsin law and the injunction was granted and upheld by the Wisconsin courts. The conduct also constituted a union "unfair labor practice" under the provisions of Section 8 (b) (1) of the Act. The court in upholding the injunction issued by the State Board said that the rule in the second group of cases described in the *Weber* case, that a State may not in the furtherance of its public policy enjoin conduct "which has been made an 'unfair labor practice' under the federal statute," was modified by the rule that the states have "power to prevent mass picketing violence and avert threats of violence."

Thus, since summarizing its prior decisions in the

Weber case, this Court has further held that conduct which is protected under the Act is not subject to state control even though the state control is based upon a state regulation outside of the labor field, such as the regulation of trade or carriers. *Weber, supra,* and *General Drivers, supra.* Also if the conduct is protected, a state may not regulate it even if the complaining party is not subject to the Act. *N. Y., N. H. & Hartford R.R. Co., supra.* Also the rule that a state may not regulate conduct which is prohibited by the Act is subject to the rule that a state may take cognizance of a case involving violence. *United Mine Workers, supra.* And finally, in all of the recent cases it is clear that where there is no violence and the conduct may reasonably be determined to be either protected or proscribed conduct under the Act, that a determination of that question must be in accordance with the Act and not by state law or in a state tribunal.

With this background in mind, we come to the facts in this case.

There is practically no dispute in these cases concerning the description or narration of the events surrounding the peaceful picketing by the petitioners of the respondent's vessel. The facts were agreed that a crew was signed on the vessel between March and August of 1952, and that the vessel proceeded to New Orleans, Louisiana, and loaded a cargo of grain which was carried to ports in India and that the vessel then returned to Portland, Oregon, after delivering a cargo of coal to Japan from India. It was also agreed that on September 9, 1952, the

great majority of the crew members of the vessel ceased working and went on strike and were discharged by the Master for their conduct. It was also clear and agreed in the pretrial orders that the Sailors' Union of the Pacific did not commence the picketing for which damages were awarded in these cases until October 14, 1952, and it has been agreed that the picketing "was at all times conducted in a peaceful manner and without any violence."

It was also agreed that "many members of the Sailors' Union of the Pacific are employed aboard American-flag vessels carrying grain between ports including the Port of Portland in the United States and ports in India, and said members and the union have an economic interest in the wages, hours and conditions of employment in said trade." (R. 20.) It was also found by the court that the wages paid by the respondent aboard the SS RIVIERA were only about one-third of the wages paid to seamen represented by the petitioners while employed aboard American-flag vessels engaged in the same trade. (R. 378.)

On the other hand, the parties are much at variance with respect to the purpose or purposes of the picketing. In Plaintiff's complaint, paragraph V, the following is alleged:

> "The alleged purpose of the picketing and the interference with the operation of plaintiff's vessel on the part of defendants and the members of Sailors' Union of the Pacific for which the defendants Benz and Williams are acting is to compel plaintiff to breach its contract with members of the crew of the steamship "Riviera" still aboard said vessel, to com-

pel plaintiff to acquiesce in the desertion and the breach of the vessel's articles by certain members of the crew of the steamship "Riviera," and to compel plaintiff to enter into a new agreement with the Sailors' Union of the Pacific. * * *" (R. 485.)

And in paragraph VI of the plaintiff's complaint the following alleged:

> "As a result of the picketing of the steamship "Riviera" by the defendants, and each of them, the vessel has been idle since September 26, 1952, and the employees of contractors with whom plaintiff had entered into contracts for the repair and preparation of the vessel to carry her cargo of grain to India have refused to perform their duties on board the vessel and plaintiff has been unable to carry out its obligations under the charter party and its right to pursue the vessel's voyage. * * *" (R. 485-486.)

It was the respondent's contention, in the pretrial order (R. 22), and the court found, that the following was the purpose of the picketing:

> "Said picketing by members of the Sailors' Union of the Pacific was intended to prevent the repairing and loading of the SS RIVIERA; and the sole purpose of said picketing by the members of the Sailors' Union of the Pacific was to compel the plaintiff to re-employ the said discharged, striking members of the crew of the SS RIVIERA for a shorter period than that stated in the articles, and at wage rates and other conditions more favorable to them than those stated in said articles." (Finding of Fact XII, R. 242.)

On the other hand the petitioners contend that the picketing had for its purpose the gaining of recognition

by the employer of the unions as the bargaining representatives of the crew to be employed aboard the vessel; (R. 30.) Also the petitioners contend that the picketing had for its purpose the raising of the standards of the working conditions aboard the vessel which was engaged in trade and commerce in which the union members were employed. (R. 30.) The unions also contended that their picketing had for its purpose the publication of their dispute with the employer concerning the hiring of replacements aboard the SS RIVIERA.

It might be argued that were the picketing for the purpose as found by the court, that it would constitute a secondary boycott and an unfair labor practice for which damages may be recovered under Section 303 of the Act. In other words if it is found that the picketing was intended to prevent the repairing and loading of the SS RIVIERA by inducing and encouraging employees of independent contractors to refuse in the course of their employment to perform services on the vessel with the object of forcing the independent contractors to cease doing business with the shipowner in order to require the shipowner to bargain with the unions and rehire the former crew members, then it could be argued that this would have constituted an unfair labor practice for which damages are recoverable under Section 303 of the Act. In this situation, like the cases cited in the second group in the *Weber* case, the remedy established by the Act would be exclusive, and a state court or a federal court in a diversity case would not have jurisdiction to award damages under the state law.

On the other hand if the unions were picketing the vessel to induce the employer to recognize them as the representatives of its employees, or if the unions were picketing the vessel to secure the jobs which were open on the vessel or to promote their own economic interests in the trade and commerce in which the vessel was engaged, then such conduct would be protected under Section 7 of the Act and under the cases cited in the first classification made in the *Weber* case it would follow that a state court or a federal court in a diversity case could not award damages for conduct protected by the federal Act.

The *Weber* case made it clear, however, that it is not necessary to determine whether the conduct is controversy falls within the definition of unfair labor practices under the Act, because the conduct in the instant cases if not prohibited by the federal Act may reasonably be deemed to come within the protection of the Act. In such a situation the issues may be passed upon in the first instance in the manner provided for under the federal Act and not by a state court or a federal court in a diversity case.

There was no mass picketing, violence or overt threats of violence. It was not a case like *United Auto Workers v. Wisconsin E. R. Board*, 351 U.S. 266, (1956) where the state was called upon to exercise its police power. The cases at bar present a situation similar to that found by this court in the *Weber* case, and in *Local Union No. 25 v. N. Y., N. H. & Hartford R.R. Co., supra,* where the court held that "the state must decline jurisdiction in

deference to the tribunal which Congress has selected for determining such issues in the first instance."

The Court of Appeals in affirming the judgments for damages of the District Court in the instant cases said:

> "The remedies sought in the cases before us is damages. No such remedy exists under the federal law in this fact situation. This is not a secondary boycott or a case of an award of back pay to reinstated employees where money damages may be recovered under the federal law. See Laburnum, supra, 665."

The Court of Appeals took it upon itself to determine that the cases did not constitute "a secondary boycott" but made no effort to determine whether or not the cases involved conduct protected by Section 7 of the Act. Furthermore, as has been made clear in the *Weber* case, the determination of the fact situation must be made under the remedies made available under the Act. In other words, since the cases do not involve violent picketing, if the respondent has an action at all for damages, it must be founded under Section 303 of the Act, and filed in a tribunal where the issues of whether the conduct is protected or proscribed under the Act can be determined.

The Congress before passing the Labor-Management Relations Act, 1947, made a complete survey of the field of labor relations and legislated by prohibiting certain types of economic pressures and protecting other types of economic pressures. This Court in *Garner v. Teamsters' Union, supra*, made it clear that where a type of picketing

is not prohibited by the Act, it is then permitted by the Act. The court said:

> "The detailed prescription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint. For the policy of the National Labor-Management Relations Act is not to condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits."

We therefore submit that the instant cases fall within the group of cases following the *Weber* case where a state court must decline jurisdiction in deference to the tribunals which Congress has selected for determining such issues in the first instance. The facts reasonably bring the controversy either within the sections of the federal Act prohibiting certain conduct, or, if not prohibited, it may be reasonably deemed to come within the protection afforded by the Act. Indeed, if the peaceful picketing is not prohibited under the federal Act, it is "implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing." *Garner v. Teamsters' Union, supra.*

Finally, if the conduct is protected under the federal Act, the state cannot award damages against the union exercising its protected federal right. On the other hand,

if the conduct is prohibited, then the respondent has a remedy under Section 303 of the Act, which remedy is exclusive and must be exercised in the manner provided for in the Act. In either event the state law cannot be applied to the controversy in a state court proceeding or by a federal court in a diversity case.

II.

The Preemption by the Federal Act is not Altered by the Fact that the Party Allegedly Damaged was a Foreigner.

As we pointed out earlier in this brief, the District Court in holding that the provisions of the Taft-Hartley Act had not so preempted the field of labor relations as to deprive the court of jurisdiction, said:

> "* * * The Taft-Hartley Act is concerned solely with labor relations of American workers—between American concerns and their employees in the United States, and is not intended to, nor does it cover a dispute between a foreign ship and its foreign crew."

Also the Court of Appeals, although it did not deem it necessary to decide the question, said:

> "It may well be that American laws should not be construed to apply, without some more explicit Congressional indication than we are able to find in the National Labor Relations Act, as amended, to situations with as many points of foreign contact as the situation at bar. Cf. Lauritzen v. Larsen, 345 U.S. 571 (1953)."

In meeting this contention it must again be pointed out that the foreign shipowner was engaged in the carriage of American grain between ports of the United States and the Orient, and that American unions had an economic interest in the working conditions of seamen employed aboard vessels engaged in that trade. (R. 243.)

Also it must be borne in mind that the gist of the cases at bar is damages for picketing conducted by the petitioners ashore in the United States.

The National Labor Relations Board has exercised its jurisdiction with respect to an unfair labor practice charge which was filed with the Board against the Sailors' Union of the Pacific on account of the picketing of a foreign-flag vessel at the Moore Dry Dock Company. The Board determined the question of the primary or secondary nature of the picketing by the union of the foreign vessel at the Moore Dry Docks. *Sailors' Union of the Pacific, AFL, and Moore Dry Dock Co.*, 92 NLRB 547, 27 LRRM 1108 (1950).

Also in *Norris Grain Co. v. Seafarers' International Union*, 232 Minn. 91, 46 NW2d 94, 26 LRRM 2597 (1950) where the Seafarers' International Union, Canadian District, picketed a Canadian vessel at the Norris Grain Company dock in Minnesota, The Minnesota Supreme Court held, after an exhaustive discussion of the authorities, that the Minnesota court lacked jurisdiction because of the preemption of the field by the Labor-Management Relations Act, 1947.

In the *Norris Grain* case the complaint alleged that the Canadian union picketed the vessel moored at the company's dock for the following purpose:

> "So that plaintiff's employees and others who would normally engage in the operation of loading said vessel and operation of said elevator have, because of such picketing and persuasion used by defendants, ceased performing such services for the plaintiff, and defendants by said unlawful acts have caused and will cause loss to plaintiff and its employees. That such unlawful acts are being done to induce or compel plaintiff to refrain from doing business with said Canadian corporation because of said failure of agreement between said Canadian corporation and said defendant Canadian Union."

The Minnesota Supreme Court in holding that the complaint alleged an "unfair labor practice" as defined in 29 USCA 158 (b) (4), said:

> "An examination of the complaint and attached affidavits can hardly lead to any other conclusion than that respondent is engaged in interstate and foreign commerce; that a labor dispute is involved in this controversy; that the object of picketing is to bring pressure to bear on respondent to compel or induce it to cease doing business with the Canadian Company for the purpose of coercing that company into recognizing the Canadian Union as bargaining representative for its employees."

In that case, as in the case at bar, the contention is made that the Act did not apply due to the fact that the shipowner was a foreign employer. In the *Norris Grain Co.* case the respondent's contention was stated as follows:

> "Respondent contends that, inasmuch as the National Labor Relations Board has no jurisdiction over the Canadian Company or the Canadian Union, the federal act does not apply. * * *"

The Minnesota Supreme Court in holding that it was immaterial that the shipowner and the Union were both foreigners, pointed out that "the primary purpose of the Labor-Management Relations Act, 1947 (29 USCA Sec. 141 et seq.), is to prevent interference with the free flow of interstate and foreign commerce and to promote harmony between management and labor in the field of interstate and foreign commerce in order to facilitate the free flow of commerce."

The court in the *Norris Grain Co.* case, in relying upon the National Labor Relations Board's decision in the Matter of *Sailors' Union of the Pacific, AFL, and Moore Dry Dock Co., supra,* in support of its decision, said:

> "The important fact is not what the decision of the Examiner was, but the fact that the National Labor Relations Board did have jurisdiction to decide the controversy. In other words, it was found to come under its jurisdiction by virtue of the National Act. If that is true of the case now before us, then obviously the state court has no jurisdiction."

The court also pointed out that the National Labor Relations Board had held that the foreign employer was an "employer" within the meaning of the federal Act. And in disposing of the respondent's contention with respect to a foreign employer the court concluded as follows:

> "It is obvious that our state courts have no more jurisdiction over the Canadian Company or its employees or the Canadian Union of its relationship to the Canadian Company or its employees than N. L. R. B. *This action is directed* not against the relationship between the Canadian Company and its employees or its relationship with the Canadian Union, *but against acts of defendants done in the United States,* and neither seeks to regulate the relationship between the Canadian Company and its employees or the Canadian Company and the Canadian Union." (Emphasis ours.)

Recently this court in *Local Union No. 25 v. New York, New Haven & Hartford Railway Co., supra* held that the fact that a railroad was expressly excluded from the terms of the National Labor Relations Act did not prevent the railroad from seeking relief through the National Labor Relations Board from picketing by a trucking union which constituted a secondary boycott in violation of Section 8 (b) (4) (A) of the National Labor Relations Act. The court said:

> "The N. L. R. B. is empowered to issue complaints whenever 'it is charged' that any person subject to the Act is engaged in any proscribed unfair labor practice. Sec. 10 (b). Under the Board's Rules and Regulations such a charge may be filed by 'any person.' * * * Furthermore, since railroads are not excluded from the Act's definition of 'person,' they are entitled to Board protection from the kind of unfair labor practice proscribed by Sec. 8 (b) (4) A."

The instant cases involve actions for damages on account of picketing. The picketing was either protected or prohibited by the provisions of the Labor-Management

Relations Act. If the picketing was prohibited by the terms of the Act, a remedy in damages and a procedure for the recovery of damages is provided for under the Act. Title 29 USCA Sec. 187.

Subsection (b) of that section provides in part as follows:

> "Whosoever shall be injured in his business or property by reason of any violation of sub-section (a) of this section may sue therefor * * * and shall recover the damages by him sustained. * * *"

The Labor-Management Relations Act does not limit the remedy for damages to persons subject to the Act, but allows damages to "Whosoever shall be injured. * * *" The alleged damages were due to picketing conducted on American soil by members of American unions. The American unions and their members were clearly subject to the Act. The foreign shipowner could and should have pursued its remedies pursuant to the terms of the Act.

The remedy allowed by the court below in damages against the petitioners was based upon the law of the State of Oregon. The fact that the respondent shipowner was a foreigner can certainly be no ground upon which to base a choice between state law rather than federal law. The foreign aspect of the dispute might invite a choice of foreign law, but could not govern a choice between state and federal law. The picketing which constituted the conduct which was the basis of these actions was carried on upon American soil. It was conduct involved in interstate and foreign commerce. The deter-

mination of whether that conduct was lawful or unlawful should be made under the federal Act. The fact that a foreign corporation was damaged does not alter the situation.

III.

The Preemption by the Labor-Management Relations Act 1947 is not Altered in these Cases by the Fact that the Employees Involved were Seamen.

The responent argued in the courts below and in opposition to our Petition for Writ of Certiorari in this court that the provisions of the Labor-Management Relations Act, 1947, did not apply because the respondent's employees were seamen and "the maritime law controls over general labor legislation." The respondent relied upon *Rees v. U. S.*, 95 F2d 784 (CA-4 1938), and *Southern SS Co. v. NLRB*, 316 U.S. 31, 62 S. Ct. 886, 86 L. Ed. 1246 (1942).

Although the Court of Appeals noted respondent's argument on this point it did not deem it necessary to decide the question, and based its decision upon its interpretation of *United Construction Workers v. Laburnum Construction Corp., supra* (R. 493).

In considering this point it is important to bear in mind that the crew members who had gone on strike had been discharged and were no longer on the vessel. (R.

241.) They had been jailed by the Immigration authorities and were still in custody. (R. 18.) And finally; the picketing which constitutes the basis for the damages awarded in the judgments below did not begin until more than a month after the crew was discharged. (R. 241.)

Rees v. U. S., 95 F2d 784 (CA-4 1938) was not an action for damages on account of picketing. It was a criminal case brought under the mutiny statutes of the United States involving only the criminal liability of the crew members for their refusal to work while under articles. The case raised no question of the tort liability of persons who were not crew members and who picketed the vessel.

In the *Southern Steamship Co.* case, also relied upon by the respondent, this court held that the crew members who went on strike while under articles committed mutiny under the laws of the United States. The court then concluded as follows:

> "Consequently and despite the initial unfair labor practice which caused the strike we hold that the reinstatement provisions of the order exceeded the Board's authority to make such requirements 'as will effectuate the policies of the Act (this Chapter)'."

This court went on, however, to make it clear that notwithstanding this decision, the Union could have, and should have, taken such measures as were available to it in furtherance of its labor dispute with the shipowner, so long as the action taken did not in itself violate the maritime law. The court said:

"It should be stressed that the view we have taken does not prevent the redress of grievances under the Act. At any time following the certification of the N. M. U. in January, 1938, the union and the Board could have secured the assistance of the courts in forcing petitioner to bargain. The importance of seeking such assistance promptly is strikingly illustrated in this case. Had the union and the Board done so, the unfortunate occurrence at Houston might have been averted. *And what is more, nothing that we have said would prevent the union from striking, picketing or resorting to any other means of self-help, so long as the time and place it chooses do not come within the express prohibition of Congress.*" (Emphasis ours.) (316 U.S. at 48, 62 St. Ct. at 895.)

This court was, of course, referring to the right of a union to picket a vessel although the crew of the vessel may be under articles and unable to go on strike without being guilty of mutiny. If such picketing is lawful under the labor law it will not be restrained nor be considered tortious merely because a shipowner or a vessel is involved, so long as the crew members who are under articles do not violate the terms of their articles or commit any act declared unlawful by the maritime law. Such picketing was declared lawful in *Matson Navigation Co. v. Seafarers' International Union*, 100 Fed Supp 730, (1951 DC Md).

The picketing in the instant cases was not in violation of the maritime law, but was conducted by non-crew members on the dock. It was not begun until about three weeks after the crew members had been discharged and had left the vessel. The picketing could not have partici-

pated a violation of the maritime law, because neither the unions nor the persons they represented were at the time of the picketing under articles, nor serving under the jurisdiction of the maritime law.

CONCLUSION

The facts and circumstances in these cases involve peaceful picketing. There was no conduct involved which called for the use by the state of its reserved police powers. The conduct may have been proscribed by the terms of the Act describing "unfair labor practices" for which a remedy of damages is provided in Section 303 of the Act. On the other hand, the conduct may reasonably have been such that it was protected by the provisions of Section 7 of the Act. In either of these circumstances the determination of the controversy should have been made by the tribunal and through the remedy afforded by the Act. The federal court sitting in a diversity case was without jurisdiction to apply state law to this controversy and grant a remedy in damages under the state law.

This court should reverse the judgments of the Court of Appeals for the Ninth Circuit and the judgments of the United States District Court for the District of Oregon, and respondent's actions herein should be dismissed.

Respectfully submitted,

KNELAND C. TANNER,

RICHARD R. CARNEY,

Counsel for Petitioners.

MAR 4 1957
JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1956
No. 204

WILLIAM BENZ, et al, Individually and as Representative of All of the Members of the SAILORS' UNION OF THE PACIFIC,

M. D. MACRAE, et al, Individually and as Representatives of All of the Members of Local 90 of the NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL,

JEFF MORRISON, et al, Individually and as Representative of All of the Members of ATLANTIC AND GULF DISTRICT, SEAFARERS' INTERNATIONAL UNION, AFL,

Petitioners,

vs.

COMPANIA NAVIERA HIDALGO, S. A., a corporation,

Respondent.

PETITIONERS' REPLY BRIEF

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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ARGUMENT

I.

The National Labor Relations Act as amended governs picketing of a foreign vessel by an American Union at an American Port.

The judgments allowed by the courts below for damages against the petitioners on account of the peaceful picketing of the respondent's vessel were based upon the law of the State of Oregon. Apparently the law of Oregon was applied because the conduct which the courts found to have been tortious was carried on in the State of Oregon. The respondent in its brief contends that the state law should be applied rather than the federal law, notwithstanding the preemption by the federal law of the field of labor relations in interstate and foreign commerce, because "the dispute underlying these cases is entirely foreign in nature." (p. 10 Resp. Br.)

As we pointed out in our opening brief, the foreign aspect of the dispute might invite a choice of foreign law but can not govern a choice between state and federal law. The respondent in its brief argues "that our law was not intended to grant them rights to so intervene in the internal economies of foreign vessels." (p. 14 Resp. Br.)

If these cases merely involved the "internal economies of foreign vessels" then the controversy would be governed neither by the law of the State of Oregon nor the law of the United States, but would be governed by the law of the flag of the vessel. The SS RIVIERA was a Liberian flag vessel. A treaty between the governments of the United States and Liberia, provides that Consular officers of Liberia shall have exclusive jurisdiction over controversies arising out of "the internal order of private vessels of his country." 54 Stat. 1751. (Set out as Apendix A).

If the dispute, as respondent argues, merely involved

the "internal economies of foreign vessels," the respondent had a complete remedy under the provisions of the treaty through the Liberian Consul. The Consul's jurisdiction is exclusive, and the courts rendering the judgments in these cases would have been without jurisdiction over the controversy. See THE WIND (DCPA, 22 F Supp 883; *Petition of Georgakopoulos*, 81 F Supp 411, 175 F2d 730 (1949) (CA 4). Thus if the respondent's argument is followed to its logical conclusion, both the state and federal law would be preempted by the foreign law and the jurisdiction of the court would be superseded by the jurisdiction of the Consul under the treaty and the judgments herein rendered nullities.

Also if it is assumed that the National Labor Relations Board does not have jurisdiction over the employer either because it is a foreigner or for some other reason, it does not follow that such employer is prevented from seeking relief through the Board or through the courts under the provisions of the Labor-Management Relations Act on account of picketing which may be in violation of the Act. As we pointed out in our opening brief, this court has so held recently in *Local Union No. 25 v. New York, New Haven and Hartford R. R. Co.*, 350 US 155, 76 S Ct 227 (1956).

The respondent in its brief did not even attempt to answer our point on the application of this latter case. Apparently the respondent realized that even though it may not be subject to the jurisdiction of the National Labor Relations Board because it is a foreigner, that

nevertheless it could avail itself of the remedies provided for through the Board for an injunction or through the courts for damages under the Act.

Finally, the cases relied upon by the respondent on page 12 of its brief concerning the applicability of the federal statutes to acts done in foreign countries are not in point. The acts complained of in the cases at bar were all done ashore in the United States. It was conduct carried on in interstate and foreign commerce. The determination of the lawfulness of the conduct should be made under the federal Act, which has preempted the field of labor management relations. The fact that the party seeking the remedy is a foreigner cannot in any event allow the choice of state law.

II.

The pre-emption by the Labor-Management Relations Act 1947 is not altered in these cases by the fact that the employees involved were seamen.

The respondent also contends in its brief that the jurisdiction of the court below to apply state rather than federal law in awarding damages for the peaceful picketing in these cases is sustained because of the supremacy of the maritime law over general labor legislation. Like respondent's contention with respect to the foreign nature of this dispute, the point with respect to the maritime law entirely begs the question of preemption of the state by the federal law in the field of labor relations in interstate and foreign commerce.

The facts in the case concerning the application of the maritime law might be considered by either the National Labor Relations Board or by a federal court in an action under the Act in determining whether or not the petitioners' conduct was protected concerted activities under the provisions of the Act. But the facts in the case involving maritime law would not divest either the Board or the federal court in an action under the Act of jurisdiction to hear and determine the controversy. In any event the maritime aspects of the case cannot be the basis of retention of jurisdiction by a state court or a federal court in a diversity case to apply state law in the determination of a labor dispute occurring in interstate commerce.

In an attempt to inject the maritime law into the case, the respondent in its brief does violence to the court's findings of fact by stating that "the picketing was one continuous chain of activity, starting simultaneously with the sit-down strike." (p. 22 Resp. Br.) and that "petitioners were not picketing for themselves, but as the uncertified representatives of former members of the RIVIERA'S crew." (p. 2 Resp. Br.) It must be remembered here that the petitioners are not the former crew members. They are members of various American seamen's unions. The damages were awarded for picketing beginning on October 14, 1952. (R. 244.) The court found that on October 14, 1952, the members of the Sailors' Union of the Pacific "acting pursuant to a resolution duly adopted by said union commenced picketing said vessel and continued to picket it until restrained

and enjoined from further picketing by the court on November 26, 1952." (R. 241.) The resolution which is set out in full on page 416 of the record, makes no demand for the rehiring of the former crew members. On the other hand the resolution points out clearly that the respondent "is paying wages of less than one-third the amount which the American shippers are paying, and * * * is taking away business from American operated ships * * *." The resolution also, after describing the conditions aboard the SS RIVIERA stated that the respondent "is unfair to the Sailors' Union of the Pacific and other legitimate seamen's unions all over the world." The resolution called for picketing of the vessel and publicity of a dispute.

The time table of events set out as part of our statement of the case in our opening brief, page 7, clearly illustrates that the petitioners were not parties to the original strike and picketing. Indeed the District Court found that the petitioners did not induce the crew members to go on strike. (R. 451 and 455.) The petitioners did not enter into the dispute until October 14, 1952 when they began picketing "pursuant to the resolution."

When the petitioners began picketing there were twenty-five jobs for seamen open on the vessel (R. 21.) The ship was lying idle and the respondent was seeking a crew to operate its vessel in a trade and commerce in which the petitioners and their fellow union members were employed. (R. 20.) The picketing by the petitioners did not and could not have caused the breach of any

articles. It could not have caused or induced mutiny or desertion or any other violations of the maritime law.

As we pointed out in our opening brief, the cases relied upon by the respondent merely hold that a crew of a vessel serving under articles may not go on strike without being guilty of mutiny. *Rees v. U. S.*, (CCA-4 1938) 95 F2d 784. And that the discharge of crew members who are under articles and refuse to work and go on strike does not constitute an unfair labor practice. *Peninsular & Occidential S S Co. v. NLRB*, (CCA-5 1938) 98 F2d 411. And finally, that where an employer has committed an unfair labor practice the Board may not order reinstatement of employees who have committed mutiny or engaged in a sit-down strike. *Southern S S Co. v. NLRB* (1942) 316US 31, 62 S Ct 886, 86 L Ed 1246; *NLRB v. Fansteel Metalurgical Corporation*, 306 US 240, 58 S Ct 490, 83 L Ed 627.

None of the cases cited by respondent involved the situation presented in the cases at bar. The cases did not involve picketing or damages for picketing, but merely involved the question of whether or not the National Labor Relations Board in making reinstatement provisions should give the seamen or other workmen affirmative relief after they had themselves committed wrongful acts. The cases do not hold that the seamen's wrongful conduct while under articles thereafter permanently bar him or his representatives from the processes of collective bargaining or from the exercise of protected concerted activities under the Act.

In conclusion the most that can be said concerning the effect of the maritime law on the question of pre-emption involved in these cases is that the National Labor Relations Board or the federal court in an action under the Act might consider the points of contact with maritime law in determining whether or not the picketing constituted protected conduct under the Act. The existence of facts involving maritime law would not divest either the Board or the federal court of jurisdiction to hear and try this labor controversy involving interstate commerce. The fact that the maritime law might be involved is no basis for the application of state law rather than federal law.

III.

The Labor-Management Relations Act 1947 has provided the exclusive remedies for damages for peaceful picketing in interstate commerce.

It is respondent's final contention that the Labor-Management Relations Act, 1947 does not provide it with a remedy in damages, and that therefore the "common law" remedy in damages under the state law is allowable because it is "not inconsistent with the Act." It is the respondent's theory a state court should be allowed to make the determination of the question of what is protected conduct as defined under Section 7 of the Labor-Management Relations Act rather than allowing the determination to be made by the Board or by a court in a proceeding brought under the Act. Allowing

state courts to so interpret the provisions of the federal act would, of course, result in a variety of decisions. This court has uniformly held that the remedies and procedures provided for under the Act are exclusive.

The district court found that the picketing by the petitioners "was intended to prevent the repairing and loading of the SS RIVIERA * * *" in order to induce the employees of independent contractors to refuse to work on the respondent's ship in order to force the independent contractors to cease doing business with respondents for the purpose of requiring the respondent to reemploy its former crew members. Nevertheless the respondent in its brief stated that the picketing "was not a prohibited secondary boycott but primarily picketing." If it was not a prohibited secondary boycott but merely primary picketing it was then conduct protected under the Act.

In the alternative respondent further argues that if it were a secondary boycott that it would have no remedy against petitioners who are individuals because Section 303 of the Act refers only to damages against "any labor organization." Respondent therefore concludes that since there is no remedy against the individual petitioners under the Act but only against their labor organization, that therefore under the authority of the *Laburnum* case that the "common law remedy for damages must be applied."

Congress in enacting the Labor-Management Relations Act, 1947, and in allowing damages against labor

unions for certain conduct provided that the injured party may sue for his damages "subject to the limitations and provisions of Section 185 of this title * * *." Title 29 USCA Sec. 187, 61 Stat 158.

Title 29 USCA Sec. 185, 61 Stat 156 provides in part as follows:

> "Any such labor organization may sue or be sued as an entity and in behalf of employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a District Court of the United States shall be enforceable only against the organization as an entity and against its assets and shall not be enforceable against any individual member or his assets."

It was obviously the intention of the Congress to provide a remedy in damages exclusively against the labor organization as an entity and not to allow a remedy in damages against individuals for labor conduct not involving actual or threatened violence.

Recently Judge Parker of the Fourth Circuit in *Friendly Society of Engravers v. Calico Engraving Co.*, 238 F2d 521 (CCA-4 1956) in holding that a labor union could not recover in damages under the common law against an employer for wrongful labor conduct except by proceeding under the Labor-Management Relations Act, 1947, said:

> "The National Labor Relations Act and the Labor Management Relations Act, however, provided exclusive remedies for the protection of the rights thus recognized; and the parties complaining of the violation of such rights may not go into court for their

> vindication but m st pursue the remedies that the acts provide. Amazon Cotton Mill Co. v. Textile Workers Union of America, 4 Cir., 167 F2d 183, 186."

and after holding that the Laburnum case was not to the contrary, concluded:

> "As pointed out above where the statute which forbids it provides at the same time a remedy for its redress without providing a right of action in the courts, the remedy so provided is exclusive. To allow actions at law to be maintained with respect to unfair labor practices which do not give rise to actions at common law, would not only burden the courts with a flood of unnecessary litigation, but would hamper the National Labor Relations Board in the performance of the duties confided to it and would breed endless confusion in labor litigation. Nothing of the sort was intended by Congress; and for the courts to sanction such litigation would retard and not advance the purposes for which the National Labor Relations Act came into being."

The fact, if it be one, that the remedy for damages allowed by the state court is not inconsistent with the Act is immaterial, because the remedy provided for by the Act is exclusive. The issues of whether or not the picketing is primary or secondary, whether it is protected under the provisions of the Labor-Management Relations Act, 1947, or prohibited by it, are all issues to be determined by proceedings under the remedies afforded under the Act.

The conduct involved in the cases at bar was peaceful picketing. Such conduct does not constitute a common law tort such as assault or trespass. Whether or not peaceful picketing is wrongful or tortious conduct depends

upon the applicable labor relations law. When such picketing is carried on in interstate commerce it is exclusively governed by the federal law and the state may not attempt to interpret the federal law and provide a remedy in damages.

CONCLUSION

Since these cases involve peaceful picketing in interstate commerce, there was not involved the commission of common law torts for which a remedy in damages might be reserved under the state law. Whether or not the peaceful picketing constituted wrongful or tortious conduct depends upon the applicable labor law. The remedy for damages provided for under the Labor-Management Relations Act, 1947, constitutes the exclusive remedy for damages on account of peaceful picketing in interstate commerce. The controversy must be determined in a proceeding under the Act and cannot be determined by a state court or a federal court in a diversity case applying state law. The circumstances in the cases relating to the fact that the employer was a foreigner and the fact that seamen were involved might at most go to the question of whether or not the picketing was conduct protected by the provisions of Section 7 of the Act. Those circumstances do not prevent the preemption of the field by the Federal Labor Relations Law nor give jurisdiction to a state court for the application of state law.

This court should reverse the judgments of the Court of Appeals for the Ninth Circuit and the judgments of

the United States District Court for the District of Oregon, and respondent's actions herein should be dismissed.

Respectfully submitted,
KNELAND C. TANNER,
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APPENDIX A

Article 10 of the Treaty, entered into in 1939 (54 Stat. 1751) reads as follows:

"A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto, provided, however, that such jurisdiction shall not exclude the jurisdiction conferred on local authorities under existing or future laws.

"When an act committed on board of a private vessel under the flag of the State by which the consular officer has been appointed and within the territorial waters of the State to which he has been appointed constitutes a crime according to the laws of that State, subjecting the person guilty thereof to punishment as a criminal, the consular officer shall not exercise jurisdiction except insofar as he is permitted to do so by the local law.

"A consular officer may freely invoke the assistance of the local police authorities in any matters pertaining to the maintenance of internal order on board of a vessel under the flag of his country within the territorial waters of the State to which he is appointed, and upon such a request the requisite assistance shall be given.

"A consular officer may appear with the officers and crews of vessels under the flag of his country before the judicial authorities of the State to which he is appointed for the purpose of observing the proceeding or of rendering assistance as an interpreter or agent."

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Petitioners,

vs.

COMPANIA NAVIERA HIDALGO, S. A., a corporation,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF RESPONDENT IN OPPOSITION

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OPINIONS BELOW

Since the filing of the petition the opinion of the Court of Appeals for the Ninth Circuit has been reported at 233 F. 2d 62, with its opinion on petition for rehearing following.

QUESTIONS PRESENTED

Does anything in the Labor-Management Relations Act, 1947, 61 Stat. 136 et seq., 29 U.S.C.A. Section 141 et seq., deprive a court of otherwise competent jurisdiction of jurisdiction to award judgment against the members of an American union for damages caused by them in peacefully picketing a tramp vessel at a port of the United States, where they were picketing:

1. As the uncertified representatives of former members of the crew of such vessel for the purpose of forcing the vessel's owner to rehire such former crew members at higher wage rates and on conditions other than those contained in the articles entered into by such former crew members and which would still be governing them had they not been properly discharged for refusing to obey the lawful commands of the vessel's master and engaging in a sitdown strike for the same purpose?

2. As the uncertified representatives of alien nonresidents of the United States for the purpose of forcing an alien corporate employer to employ such alien nonresidents aboard the vessel, which was registered under a foreign flag?

3. For a purpose unlawful under the laws of the state in which the picketing occurred?

STATEMENT OF THE CASE

The facts are uncontested. The findings of the district court are in the record, in the Benz case at pp. 237-244, MacRae case at pp. 323-332 and Morrison case at

pp. 369-378. These and the procedural history of the case are well and briefly summarized in the opinion of the court of appeals, 233 F. 2d 62, at 63-4, Appendix A to Petition, at 21-23.

We shall not completely restate the case here; but wish to call the Court's attention to those findings, not mentioned in petitioners' statement of the case, which bring this case under previous decisions of this Court and which would require affirmance of the judgments below, without reaching the questions on which petitioners seek review. Identical in each case, they are:

"V

"Between March, 1952, and August, 1952, the crew members of the steamship Riviera, principally German and British and all citizens of countries other than the United States, signed a British form of articles whereby said crew members agreed to work on said ship on a voyage from Bremen, Germany, for a period of two years and further agreed that British Maritime Board conditions were to apply to wages and hours of employment, and agreed that shore leave and cash advances to be at the discretion of the master of the ship. By the terms of said Articles of Agreement, said crew members and plaintiff herein agreed upon the wages to be paid to the crew members and the provisions as agreed upon were set forth in said agreement. The wage rates specified therein for each member were equal to or higher than those customarily then paid for similar employment in the British Merchant Marine. Said crew members further agreed by the terms of said articles to be obedient to the lawful commands of said master in everything relating to said ship and the stores and cargo thereof, whether on board, in boats, or on shore." (Record 239, 325, 371)

"VIII

"Plaintiff complied with all of its obligations under the terms of the ship's articles and the contract governing the relations between the plaintiff and members of the crew of said vessel." (Record 240, 327, 373)

"IX

"On or about the 9th day of September, 1952, a number of members of the crew of the Riviera refused to obey the lawful orders of the master of said vessel and went on strike for the sole purpose of cutting down the term of their service from two years, the length of service agreed upon in their Articles, and to obtain a higher wage rate and other conditions more favorable to them than those agreed upon in said Articles." (Record 240, 327, 373)

"X

"From the date of said strike up to and including September 26, 1952, the striking crewmen of said vessel remained aboard the vessel, continued to occupy their quarters, refused to continue to work aboard said vessel and refused to leave the vessel. On or about September 18, 1952, plaintiff filed in this court a possessory libel, bearing Civil No. 6629. On September 25, 1952, said striking crewmen were ordered by order of this court in said possessory libel to leave said vessel and said crewmen, on September 26, left said vessel." (Record 241, 327, 373)

ARGUMENT

I The Judgments Against Petitioners Are Correct Irrespective of the Answers to the Questions on Which Petitioners Seek Their Review

Petitioners seek review of the decision of the Court of Appeals that the National Labor Relations Act of 1947 does not so far vest jurisdiction in the National Labor Relations Board as to deprive the courts of juris-

diction to award damages in tort to one injured by peaceful picketing for a purpose unlawful under the law of the state where it occurred. But, for two reasons, it is doubtful that this Court would ever reach that question.

First, because the picketing here involved was for an unlawful purpose under general Maritime Law and constituted a Maritime tort, as well as a tort under state law. Under these circumstances there need be no question of the preemption of federal law over state law, but a question of which federal law controls. The courts have consistently held the Maritime Law controls over general labor legislation.

In *Rees vs. U. S.*, 95 F. 2d 784, the Court of Appeals for the Fourth Circuit reviewed the many protections both by legislation and the general maritime law which surround the employment relationship of seamen on the vessel on which they serve. The court pointed out that the safety of lives and property aboard ship depend upon a high discipline which is destroyed by strikes and refusal to obey orders of the master. It pointed to the dependence of the seaman upon his vessel and that neither the shipowner nor the seaman is in a good bargaining position in a foreign land, whose shores may be inhospitable to the crew and unproductive of any substitutes for them. For these reasons the court stated:

> "When articles are signed by a crew for a voyage, all bargaining, individual and collective, is ended for the duration of the voyage. A contract is made, binding both owner and seaman, that is lawful, if the articles comply with the statutes, and should be lived up to scrupulously." (95 F. 2d 784, at 792)

This question has also been passed upon by this Court in *Southern Steamship Company vs. NLRB*, 316 U.S. 31, 86 L. Ed. 1246, 62 S. Ct. 886, and by the Court of Appeals for the Fifth Circuit in *Peninsular & Occidental Steamship Co. vs. NLRB*, 98 F. 2d 411. In each of these cases it was held that seamen who had gone on strike while under articles were not entitled to reinstatement. In each case the NLRB had found the shipowner guilty of an unfair labor practice in discharging the striking crew members and ordered reinstatement of the men in order to effectuate the purposes of the National Labor Relations Act. Nevertheless the courts held that reinstatement under these circumstances, despite the public policy of the Act, would not be enforced to the detriment of maritime discipline.

The discharged members of the crew had no rights under the National Labor Management Relations Act to bargain collectively concerning wages, hours and working conditions where such was forbidden by their articles and Maritime Law. The appointment of petitioners as their representatives was nothing more than an attempt to gain through agents rights which they, as principals, did not have and could not confer on the agents.

A second reason why the National Labor Management Relations Act is totally inapplicable to this case lies in the foreign nature of the dispute. It involved basically a contract of employment between an alien employer and alien employees to be wholly performed aboard a foreign vessel. This Court has long held that words in acts of Congress having universal scope, "will be taken,

as a matter of course, to mean only everyone subject to such legislation, not all the legislator subsequently may be able to catch." *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 357, 53 L. ed. 826, 832 (1909) (Sherman Act held inapplicable to acts done in Costa Rica.) It has recently ruled that in the absence of any language to the contrary Congress must be presumed to intend to limit labor legislation to the "territorial jurisdiction" of the United States, *Foley Bros., Inc. v. Filardo*, 336, U.S. 281, 93 L. ed. 680 (1949) (Eight-Hour law inapplicable to bases in Iraq and Iran.) And in the field of Admiralty, the court has even more recently held that the universal language of the Jones Act was not intended to extend to a foreign seaman injured aboard a foreign ship, although jurisdiction of the parties was temporarily present, *Lauritzen v. Larsen*, 345 U.S. 571, 97 L. ed. 1254 (1953).

So here there is nothing but the temporary presence of the vessel at a United States port and the American unions acting, not for themselves, but as *representatives of foreigners*. There is no reason to believe Congress intended our labor legislation to apply. There are many reasons to believe otherwise. Chaos would ensue if articles were valid in one port but not the next, if at every briefly intended call at port the ship must pause while new representatives were chosen for the crew and a new bargain made according to local law. Reprisals against vessels flying the stars and stripes might quickly be expected if this country thus asserts jurisdiction over relations aboard other ships and impedes the flow of foreign commerce.

Recognizing this, the National Labor Relations Board has itself held that it lacked jurisdiction to interfere in the internal economy of a foreign vessel by holding an election to determine a collective bargaining agent for the crew. *Sailors' Union of the Pacific, Case No. 20, R. C. 809, C.C.H. Labor Reports, 1950-51, N.L.R.B. Decisions, Par. 1,081, May 1, 1950.*

II. The Decision Below Is Correct

The decision below is not in conflict with any other of this Court or of any of the other circuits. Neither this Court, nor any of the federal courts have ever specifically held that damages in tort may not be awarded under state law for peacefully conducted picketing which is unlawful in objective.

Except for *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656, 98 L. ed. 1025 (1954), none of the cases cited by petitioners dealt with the question of damages at all. And *Laburnum* clearly held that tort remedy of damages provided by state law available. In so doing, the Court pointed out that Congress intended by the National Labor Management Relations Act to increase, not reduce, the liability of labor for its wrongs, that the legislative history showed that the remedy of damages was meant to be supplemented, not displaced, and that Congress had not provided in the Act any general procedures "for dealing with the consequences of tortious conduct already committed," so as to preempt that field. All of that reasoning is as applicable to a tortious injury involving wrongful ends as to one involving wrongful means.

And in this case it is hard to separate the ends from the means. While the picketing itself was peaceful, its purpose was the support of previously used improper means. The mutinous conduct of the crew and their sitdown strike were acts held criminal by the district court in ordering them to leave the vessel.[1] Thus both ends and means of the discharged crew members were unlawful. Even if there may be some instance where the holding of *Laburnum* would be inapplicable to peaceful picketing for an unlawful purpose, the background of these cases is not such as to invite that distinction.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

LOFTON L. TATUM,
JOHN D. MOSSER,
GUNTHER F. KRAUSE,
Counsel for Respondent.

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[1] "The conduct of the respondents, if they were on an American vessel would constitute mutiny. *Southern S. S. Co. v. Labor Board*, 316 U.S. 31. In my opinion, even though the "Riviera" is a foreign ship, the activities of the seamen constitute criminal conduct—trespass—at the very least." (Unpublished opinion of the Honorable Gus J. Solomon, District Judge, in the District Court of the United States for Oregon, *Compania Naviera Hidalgo, S.A., v. SS Riviera, her engines, etc., N. Pedersen, et al*, Civil No. 6629, rendered September 25, 1952.)

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In the Supreme Court
of the United States

OCTOBER TERM, 1956
No. 204

WILLIAM BENZ, et al, Individually and as Representatives of All of the Members of the SAILORS' UNION OF THE PACIFIC,

M. D. MACRAE, et al, Individually and as Representatives of All of the Members of Local 90 of the NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL,

JEFF MORRISON, et al, Individually and as Representatives of All of the Members of ATLANTIC AND GULF DISTRICT, SEAFARERS' INTERNATIONAL UNION, AFL,

Petitioners,

vs.

COMPANIA NAVIERA HIDALGO, S. A., a corporation,

Respondent.

BRIEF FOR RESPONDENT

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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In the Supreme Court
of the United States

OCTOBER TERM, 1956
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WILLIAM BENZ, et al, Individually and as Representatives of All of the Members of the SAILORS' UNION OF THE PACIFIC,

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JEFF MORRISON, et al, Individually and as Representatives of All of the Members of ATLANTIC AND GULF DISTRICT, SEAFARERS' INTERNATIONAL UNION, AFL,

Petitioners,

vs.

COMPANIA NAVIERA HIDALGO, S. A., a corporation,

Respondent.

BRIEF FOR RESPONDENT

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

QUESTIONS PRESENTED

Respondent, a Panamanian corporation, sued Petitioners, the members of American unions, by class procedure in the District Court for the District of Oregon.

Respondent recovered a judgment, affirmed by the Court of Appeals for the Ninth Circuit, for the damages caused by petitioners' conduct in peacefully picketing the S. S. Riviera, a Liberian flag tramp vessel owned by respondent, while it was at Portland, Oregon.

Petitioners were not picketing for themselves; but as the uncertified representatives of former members of the Riviera's crew, who were all foreign nationals, chiefly German and British.

The sole purpose of the picketing was to force Respondent to rehire these former crew members aboard the S. S. Riviera at higher wage rates and on conditions other than those contained in the articles entered into by such former crew members and which would still be governing them had they not been properly discharged for refusing to obey the lawful commands of the vessel's master and engaging in a sitdown strike for the same purpose.

The questions presented are:

1. Whether the protection of the Labor Management Relations Act of 1947, 61 Stat. 136 et seq., 29 U.S.C.A. Section 141 et seq., extends to picketing by American Unions seeking re-employment for foreign seamen aboard the foreign-flag vessel of a foreign shipowner during its briefly-intended call at a United States port?

2. Whether, if that Act does extend to such a foreign dispute, any protection which it might otherwise afford the picketing of Petitioners is overridden by the policies of the General Maritime Law against strikes by a crew

under articles and against the forced rehiring of a once-mutinous crew?

3. Whether that Act affords Respondent any remedy against the picketing of Petitioners so far in conflict with the common law remedy of damages as to deprive the District Court of jurisdiction to award such damages in these cases?

STATEMENT OF THE CASE

Many of the factual references contained in Petitioners' Statement of the Case are not to facts found by the District Court but to misleading and incomplete testimony, rejected by the District Court in making its findings, and irrelevant to the questions presented. Thus, for example, they recite that spoiled meat was loaded (Pet. Br. p. 8); but fail to state that it was not used but thrown overboard (Tr. 460) and that the Court found that Respondent had fully complied with its obligations under the articles (Tr. 240, 327, 373). We do not pause to correct all of these errors, but take the liberty of setting forth, summarizing in part, the findings actually made and which govern here.

Respondent is a Panamanian corporation (Tr. 237, 324, 370) and the owner and operator of the Liberian vessel S. S. Riviera (Tr. 239, 325, 371). The named petitioners are officers and members of three unincorporated maritime labor unions and were sued individually and as appropriate representatives of classes composed of all members of their respective unions (Tr. 237-8, 324-5, 370-71). The District Court found:

"Between March, 1952, and August, 1952, the crew members of the steamship Riviera, principally German and British, and all citizens of countries other than the United States, signed a British form of articles whereby said crew members agreed to work for a period of two years and further agreed that British Maritime Board conditions were to apply to wages and hours of employment, and agreed that shore leave and cash advances were to be at the discretion of the master of said ship. By the terms of said Articles of Agreement, said crew members and plaintiff herein agreed upon the wages to be paid to the crew members and the provisions to be furnished to crew members, and the scale of wages and provisions as agreed upon were set forth in said agreement. The wage rates specified therein for each crew member were equal to or higher than those customarily then paid for similar employment in the British Merchant Marine. Said crew members further agreed by the terms of said articles to be obedient to the lawful commands of said master in everything relating to said ship and the stores and cargo thereof, whether on board, in boats, or on shore." (Tr. 239-40, 325-6, 371-2).

After a voyage to the Orient, the Riviera came to Portland for repairs and to load a cargo of wheat, docking at that port on September 3, 1952 (Tr. 240, 326, 372-3). The findings of the Court continue:

"Plaintiff complied with all of its obligations under the terms of the ship's articles and the contract governing the relations between the plaintiff and members of the crew of said vessel." (Tr. 240, 327 373).

"On or about the 9th day of September, 1952, a number of members of the crew of the Riviera refused to obey the lawful orders of the master of said vessel and went on strike for the sole purpose of cutting down the term of their services from two

years, the length of service agreed upon in their Articles, and to obtain a higher wage rate and other conditions more favorable to them than those agreed upon in said Articles." (Tr. 240-41, 327, 373).

"From the date of said strike up to and including September 26, 1952, the said striking crewmen of said vessel remained aboard the vessel, continued to occupy their quarters, refused to continue to work aboard said vessel and refused to leave the vessel. On or about September 18, 1952, plaintiff filed in this court a possessory libel, bearing Civil No. 6629. On September 25, 1952, said striking crewmen were ordered by order of this court in said possessory libel to leave said vessel and said crewmen, on September 26, 1952, left said vessel." (Tr. 241, 327, 373).

"From September 9, 1952, until September 26, 1952, said striking members of the crew picketed the vessel. Said striking crew members or others acting for them picketed said vessel from September 26 through October 13, 1952, when they withdrew their picket line. On or about September 15, 1952, said striking members of the crew of the SS Riviera designated the Sailors' Union of the Pacific as their collective bargaining representative. Immediately after the withdrawal of said picket line and on October 14, 1952, members of the Sailors' Union of the Pacific, a voluntary unincorporated labor organization, acting pursuant to a resolution duly adopted by said Union, commenced picketing said vessel and continued to picket it until restrained and enjoined from further picketing by this court on November 26, 1952. Thereafter, and on that day, the picket line was removed from the said vessel. On November 28, 1952, a picket line was established at the vessel by three men acting for Local 90 of the National Organization of Masters, Mates and Pilots, A. F. of L., a voluntary unincorporated labor organization. On December 8, 1952, by decree of this court, members of said

Local 90 of the National Organization of Masters, Mates and Pilots and all persons acting by, through, under or in concert with them, were enjoined from picketing or otherwise interfering with the use of said vessel. Thereafter, and on that day, said picket line was removed from the vessel. On December 10, 1952, a picket line was established at the vessel by defendants Morrison and Johnson, acting for the Atlantic and Gulf District, S.I.U., A. F. of L. On December 12, 1952, by decree of this Court, members of the said Atlantic and Gulf District, S.I.U., A. F. of L., and all those acting by, through, under or in concert with them, were enjoined from picketing or otherwise interfering with the use of said vessel. Said picketing would have been continued had it not been so enjoined. All of said picketing, at, around or near the SS Riviera was conducted in a peaceful manner and without any violence." (Tr. 374-5, 241-2 in part, 327-9 in part).

The picketing was intended to prevent the repairing and loading of the SS Riviera and, the Court found, the sole purpose of the picketing by the Sailors' Union of the Pacific,

> "was to compel the plaintiff to re-employ the said discharged, striking members of the crew of the said SS Riviera for a shorter period than that stated in the articles, and at wage rates and other conditions more favorable to them than those stated in said articles." (Tr. 242).

The Court found that the picketing of each of the other unions was for the same purpose

> "and to help the Saliors' Union of the Pacific in obtaining that objective after it had been restrained from picketing for that purpose." (Tr. 329, 375).

Employees of the firms hired to repair and load the vessel respected the various picket lines, and the ship

was unable to work while the picketing continued (Tr. 242, 329-30, 375-5). The picketing was the proximate cause of plaintiff's damage, which the Court assessed at the rate of $900.00 per day (Tr. 244, 331-2, 376-7).

Each of the unions had an economic interest in the wages, hours and conditions of employment aboard ships carrying grain from Portland; and the wages paid aboard the RIVIERA were lower than those paid on ships with which these unions had contracts (Tr. 243, 331, 378).

SUMMARY OF ARGUMENT

The dispute underlying these cases is entirely foreign in nature and there is no reason to presume Congress intended to cover employment aboard foreign ships in writing the Taft-Hartley Act. The purpose of the Act was to remove "obstructions to the free flow of commerce"; but commerce could only be impeded and a great strain placed on our relations with other maritime nations if their ships were subjected to the necessity of renegotiating wages, hours and working conditions according to our standards whenever they fell within the range of our sovereign power and an American union's picket line.

The National Labor Relations Board has itself determined that its jurisdiction does not extend to foreign ships. *Companie Maritime Samsoc Ltd.. Sailors Union of the Pacific*, Case No. 20, R.C. 809, May 1, 1950, C.C.H. Labor Reports, 1950-51, NLRB Decisions, Par. 1081. In the absence of any language to the contrary Congress must be presumed to intend to limit

labor legislation to the "territorial jurisdiction" of the United States, *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 69 S.Ct. 571, 93 L ed. 680.

Sailors' Union of the Pacific, AFL, and *Moore Dry Dock Co.*, 92 N.L.R.B. 547, 27 L.R.R.M. 1108 (1940) and *Norris Grain Co. v. Seafarers' International Union*, 232 Minn. 91, 46 NW (2d) 94, 26 L.R.R.M. 2597 (1950); cited by Petitioners are not in point. They hold only that the Board had jurisdiction of complaints by American employers seeking injunction of unfair labor practices allegedly committed against them.

Even on an American owned ship, flying the stars and stripes and manned by American seamen, The National Labor Management Relations Act would not have protected "concerted activities" such as the crew of the Riviera engaged in by refusing to obey the lawful commands of the master and going on a sitdown strike. The requirements of discipline aboard ship prohibit conduct which might be protected if engaged in by workers ashore, *Southern SS Co. v. N.L.R.B.* (1942) 316 U.S. 31, 62 S. Ct. 886, 86 L ed. 1246; *Rees v. United States*, (CCA 4, 1938), 95 F.(2d) 784. A shipowner not only has a right to discharge a mutinous crew, but a duty to do so, since it renders the vessel unseaworthy, *Peninsular & Occidental Steamship Co. v. N.L.R.B.*, (CCA 5, 1938), 98 F(2d) 411.

Even a non-maritime employer cannot be forced to rehire an employee discharged for incompetence, illegal conduct or other just cause, and those who aid and abet sitdown strikes lose the protection of the Act, *N.L.R.B.*

v. Fansteel Metallurgical Corp., 306 U.S. 240, 59 S. Ct. 490, 83 L ed. 627, 123 A.L.R. 599. The picketing was one continuous chain of activity, starting simultaneously with the sitdown strike. To hold part of it protected activity merely because carried out by Petitioners would be to grant them rights as agents which their principals, the crew, did not have themselves.

The Labor Management Relations Act provides Respondent no remedy against the picketing of Petitioners. It was not a prohibited secondary boycott but primary picketing. The only case cited by Petitioners that considered the question so holds, *Sailors' Union of the Pacific and Moore Dry Dock Co.*, 92 N.L.R.B. 547, 27 L.R.R.M. 1108.

Even if it were a secondary boycot, the Act would provide no remedy. Section 303 speaks only of "any labor organization" and provides an action for damages only against them, not against individuals. In such cases a common law remedy for damages may be applied, *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656, 74 S. Ct. 833, 98 L ed. 1025.

Even as regards labor organizations against which the Act provides a remedy, the forum is not exclusive, but includes the forum here employed. No administrative determination by the Board is necessary before bringing an action for damages, *International Longshoremen's and Warehousemen's Union v. Juneau Spruce Corp.*, 342 U.S. 237, 72 S. Ct. 235, 96 L ed. 275.

ARGUMENT

I. The National Labor Management Relations Act of 1947 Affords No Protection to Picketing of a Foreign Flag Vessel on Behalf of Foreign Seamen Seeking Foreign Employment From The Vessel's Foreign Owner

Petitioners' Brief argues that the mere fact that Respondent is a foreigner does not exempt it from the National Labor Management Relations Act (Pet. Br. 30-36). Possibly so; but Respondent is not the only thing foreign.

The dispute underlying these cases is entirely foreign in nature. It arose in the breach by foreign seamen of shipping articles, entered into at foreign ports, for service aboard the foreign flag vessel of a foreign shipowner. At the time of the picketing for which damages were awarded in these cases, it involved the subsequent efforts of these foreign seamen to force their foreign former employer to rehire them for further service aboard the foreign flag vessel, after they had been discharged for engaging in the sit-down strike which constituted the breach of their articles.

Because of this the District Court held the National Labor Management Relations Act of 1947 inapplicable. In his opinion, District Judge Solomon stated,

> "It seems clear to me that the Taft-Hartley Act is concerned solely with the labor relations of American workers—between American concerns and their employees in the United States, and it is not intended to, nor does it cover a dispute between a foreign ship and its foreign crew." (Pet. for Cert., p. 38).

Noting the foreign aspect of these cases, the Court of Appeals stated in its opinion,

> "It may well be that American laws should not be construed to apply, without some more explicit Congressional indication than we are able to find in the National Labor Relations Act, as amended, to situations with as many points of foreign contact as the situation at bar." (*Benz v. Compania Naviera Hidalgo*, 233 F.(2d) 62, at p. 65).

It found it unnecessary to rule on that point, however, as it affirmed the judgments on other grounds.

The National Labor Relations Board has itself determined that its jurisdiction does not extend to foreign ships. In *Companie Maritime Samsoc Ltd., Sailors Union of the Pacific*, Case No. 20, R.C. 809, May 1, 1950, C.C.H. Labor Reports, 1950-51, NLRB Decisions, Par. 1081, the Board dismissed a petition brought by the Sailors' Union of the Pacific to determine a collective bargaining agent for the crew of the Panamanian owned and registered vessel, the S. S. Pho Pho, "* * * on the ground that the internal economy of a vessel of a foreign registry and ownership was involved."

It is true that the definitions in the Act (61 Stat. 137, 29 U.S.C.A. § 152) are literally broad enough to encompass a foreign situation such as this. However, this Court has long held that words in acts of Congress having universal scope, "will be taken, as a matter of course, to mean only everyone subject to such legislation, not all the legislator subsequently may be able to catch." *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 357, 29 S. Ct. 511, 53 L. ed. 826, 832 (1909)

(Sherman Act held inapplicable to acts done in Costa Rica.) It has recently ruled that in the absence of any language to the contrary Congress must be presumed to intend to limit labor legislation to the "territorial jurisdiction" of the United States, *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 69 S. Ct. 571, 93 L ed. 680 (1949). (Eight-Hour law inapplicable to bases in Iraq and Iran.) And in the field of Admiralty, the court has even more recently held that the universal "any seaman" of the Jones Act was not intended to extend to a foreign seaman injured aboard a foreign ship in foreign waters, although jurisdiction of the parties was temporarily present in the United States, *Lauritzen v. Larsen*, 345 U.S. 571, 73 S. Ct. 921, 97 L ed. 1254 (1953).

There is no reason to presume Congress intended to cover employment aboard foreign ships in writing the Taft-Hartley Act. The purpose of that Act was to remove "obstructions to the free flow of commerce" (61 Stat. 136; 29 U.S.C.A. § 151); but commerce could only be impeded if ships must pause at every briefly intended port of call to bring their labor conditions into accord with local law. The essence of the Taft-Hartley Act lies in its protection of collective bargaining and machinery for determining collective bargaining agents. Yet even the delays incident to selection of collective bargaining agents in our ports would impose a great burden on foreign shipping.

Moreover the articles of foreign ships are made in the light of the economy and customs of their own lands. To one nation a large crew all employed at a

modest wage may seem more desirable than a small crew employed at high wages. In any event the wage scale will be in accord with other employment in the native land rather than the highest or lowest of the economies at whose ports it calls. A nation whose shipping is much greater than necessary for its own commerce may deem articles for long voyages best, while a nation whose bottoms carry little but its own exports and imports may favor articles written for a short voyage from one home port to another. Among some nationalities an ample supply of alcoholic beverage for the crew or living quarters for the wives and families of ship's officers may be the sine qua non of good working conditions. Other nations may prohibit them, either by law or custom.

Innumerable other variances could be cited without adding to the obvious point that shipping would be disrupted and a great strain placed on our relations with other maritime nations of the world if their ships were subjected to the necessity of renegotiating wages, hours and working conditions according to our standards whenever they fell within the range of our sovereign power and an American union's picket line.

Petitioners argue, however, that the Act applies because they are members of American unions and their picketing was conducted on shore in the United States. Counsel for Petitioners repeat in their brief the allegations they made below that their picketing was for the purposes of securing recognition as a collective bargaining agent, protecting their own interests in working

conditions aboard vessels engaged in carrying some cargoes similar to cargoes carried by vessels on which their members were employed and securing employment for their members (Pet. Br. 25-26). Even if those allegations were true, it seems, for the reasons just stated, that our law was not intended to grant them rights to so intervene in the internal economies of foreign vessels.

These allegations of Petitioners were, however, rejected by the District Court, which found that each of the unions was picketing for the sole purpose of forcing the rehiring of the former crew members who had disobeyed the lawful orders of the vessel's master and so been discharged. Picketing for that purpose, their rights as agents of these former crew members should be no different than the rights of their foreign principals; and there is even less reason to find protection for them in the National Labor Management Relations Act.

Petitioners cite two cases which are claimed to support the applicability of the Taft-Hartley Act to a foreign dispute such as this: *Sailors' Union of the Pacific, AFL, and Moore Dry Dock Co.*, 92 NLRB 547, 27 LRRM 1108 (1940) and *Norris Grain Co. v. Seafarers' International Union*, 232 Minn. 91, 46 NW(2d) 94, 26 LRRM 2597 (1950). Neither case is in point. In the *Moore Dry Dock Case*, the case was brought to the Board by an American employer, the owner of the drydock, claiming that picketing by the Sailors' Union was of the drydock and constituted a secondary boycott and unfair labor practice. In the *Norris Grain Case*, the suit for an injunction was similarly brought by the American owner

of a grain elevator, charging the union with a secondary boycott by picketing, not of a foreign vessel, but of the grain elevator. That the Board had jurisdiction of these complaints by American employers seeking injunction of unfair labor practices allegedly committed against them is all that the cases establish. Neither case determined that the act was intended to apply to employment aboard foreign ships.

Quite the contrary, in the *Moore Dry Dock case*, the Trial Examiner referred to the Board's earlier decision in *Companie Maritime Samsoc, Ltd., Sailors Union of the Pacific*, supra, and expressly stated that its decision there had been based on a lack of jurisdiction, 92 NLRB 547, at p. 561, 27 LRRM 1108, at p. 1109. The Board expressly stated that it did not consider whether the foreign shipowner was an "employer" within the meaning of Section 8(b)(4)(a) since that question was not properly before it, 92 NLRB 547 at p. 552, fn. 17. And in the *Norris Grain Case*, the Court emphasized that the question was one of the rights of the American employer, stating

> "* * * It would seem that the impact upon interstate and foreign commerce is the same, whether the object of the picketing is to coerce an employer to recognize a labor union as a bargaining agent for its employees even though N.L.R.B. has no jurisdiction over such employer as it has if the employer is subject to such jurisdiction. The federal act and our state act prohibiting such coercive action both seek to protect an innocent neutral employer who is not involved in the labor dispute. It would be a travesty to hold that such neutral employer has no right to such protection merely because the object of the picketing is to bring pressure

on an employer who is a citizen of a foreign country over whom the N.L.R.B. has no jurisdiction." (46 NW(2d) 94, at p. 103, 232 Minn. 91, at p. 106).

The National Labor Management Relations Act cannot reasonably be held to have intended the protection of foreign employees in their relations with foreign employers. The few cases which have considered the problem so hold.

II. Neither a Strike by Seamen Under Articles nor Picketing to Force the Rehiring of Seamen Who had been Discharged for Striking While Under Articles is Protected "Concerted Activity" Within the Meaning of the National Labor Management Relations Act of 1947

A. Strikes by Seamen Under Articles are not "Concerted Activities" Protected by the National Labor Management Relations Act of 1947

Even had this been an American owned ship, flying the stars and stripes and manned by American seamen, The National Labor Management Relations Act would not have protected "concerted activities" such as the crew of the RIVIERA engaged in by refusing to obey the lawful commands of the master and going on a sit-down strike. Both this Court and the lower Federal Courts have consistently held that the requirements of discipline aboard ship prohibit conduct which might be protected if engaged in by workers ashore. *Southern S.S. Co. v. N.L.R.B.* (1942) 316 U.S. 31, 62 S. Ct. 886, 86 L ed. 1246; *Peninsular & Occidental Steamship Co. v. N.L.R.B.*, (CCA 5, 1938), 98 F(2d) 411; *Rees v. United States*, (CCA 4, 1938), 95 F(2d) 784.

In the *Southern Steamship case*, supra, the crew of an American vessel had gone on strike in a United States port, refused to obey the commands of the vessel's master and remained peacefully aboard the vessel. The strike ended 11 hours later when the shipowner's attorney promised to negotiate with the union to which the seamen belonged. At the end of the voyage the men were discharged. The N.L.R.B. held that an unfair labor practice of the shipowner had precipitated the strike and that the shipowner was, therefore, guilty of a further unfair labor practice in discharging the men. It ordered them reinstated. This Court held the Board's order unenforceable in view of the paramount requirements of maritime discipline. In the opinion of the Court, Mr. Justice Byrnes stated,

> "Ever since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land. The lives of passengers and crew as well as the safety of ship and cargo are entrusted to the master's care. Every one and every thing depend upon him. He must command and the crew must obey. Authority cannot be divided. These are actualities which the law has always recognized." (316 U.S. at p. 38, 62 S. Ct. at p. 890, 86 L. ed. at p. 1255).

The *Peninsular and Occidental case* is virtually identical with the one just discussed, except that the crews of two vessels were involved. They engaged in sitdown strikes and threatened further such action in a jurisdictional dispute over representation. As a result the shipowner discharged them and laid up its vessels. The N.L.R.B. ordered reinstatement, deeming the discharges unfair labor practices. The Court of Appeals for the

Fifth Circuit held that no unfair labor practice was involved and reversed the order. It emphasized that the shipowner not only had a right to discharge a mutinous crew, but a duty to do so:

> "A ship that is not manned by a competent crew is unseaworthy. Propellor Niagara v. Cordes, 21 How. 7, 16 L. Ed. 41. No doubt the members of the crews were individually competent as seamen but that was not enough to show the crews were competent as a unit. It would be difficult to imagine any greater grounds of incompetency than disobedience of the lawful orders of the master and the possibility of mutiny. It would be gross negligence for a vessel to put to sea with that kind of crew." (98 F(2d) at pp. 414-415).

Rees v. United States was a criminal prosecution for mutiny of a crew which had engaged in a sitdown strike in a foreign port. They raised the defense that their conduct was protected under the National Labor Relations Act. The Court of Appeals for the Fourth Circuit reviewed the many protections both by legislation and the general maritime law which surround the employment relationship of seamen on the vessel on which they serve. The court pointed out that the safety of lives and property aboard ship depend upon a high discipline which is destroyed by strikes and refusal to obey orders of the master. It stressed the dependence of the seaman upon his vessel and that neither the shipowner nor the seaman is in a good bargaining position in a foreign land, whose shores may be inhospitable to the crew and unproductive of any substitutes for them. For these reasons the court stated:

> "When articles are signed by a crew for a voyage, all bargaining, individual and collective, is ended for the duration of the voyage. A contract is made, binding both owner and seaman, that is lawful, if the articles comply with the statutes, and should be lived up to scrupulously." (95 F.(2d) at p. 792).

Counsel for Petitioners point out that the decisions in both the *Southern Steamship Case* and *Rees v. United States* were based in part on the criminal statutes of the United States against mutiny, which are inapplicable to the Riviera (Pet. Br. p. 37). While technically correct, this is a distinction without substance. Mutiny was a well understood offense long before it became incorporated into the express provisions of our criminal code. And all of the reasoning of the cases cited applies with equal force regardless of the applicability of our mutiny statute.

The needs of discipline at sea are if anything greater on a ship such as the Riviera where there is no common bond of nationality among the members of the crew. The provision of the Riviera's articles that the crew obey the lawful command of the master in everything relating to the ship and the stores and cargo thereof whether on board, in boats or on shore (Tr. 239) is identical with the requirement aboard vessels of the United States (46 U.S.C.A. § 564). A foreign shipowner as well as an American one would be negligent and render his vessel unseaworthy by retention of a mutinous crew. And foreign as well as American seamen are wards of Admiralty, and even to a limited extent of Congress by express provision of The LaFollette Act, 38

Stat. 1164 §§ 4, 11 and 14, 46 U.S.C.A. §§ 597, 599 and 481, so that they have other protections in dealing with their employers than do shore employees.

If the National Labor Management Relations Act of 1947 applies to a foreign crew on a foreign ship at all, it should not be held to protect the mutinous conduct of the Riviera's crew. To do so would not only ignore the bounds of comity among maritime nations, but also place foreign shipowners in the hopeless position of having either to condone mutiny, with consequent liability for unseaworthiness under our maritime law or to discharge the mutinous seamen and thus become liable to the crew under our labor laws.

B. The National Labor Management Relations Act Does Not Protect Picketing for the Purpose of Requiring an Employer to Rehire Employees Discharged for Conduct Which Is Not Protected by That Act, and Which Is Contrary to Other Public Policy.

Counsel for Petitioners, urge that, even if the strike by the Riviera's crew was not protected activity, the picketing of Petitioners is protected as the seamen they represented were then no longer under articles (Pet. Br. p. 36 ff.). In suport of this argument they quoted from this Court's decision in the *Southern Steamship Case*, supra, as follows:

> "* * * nothing that we have said would prevent the union from striking, picketing or resorting to any other means of self-help, so long as the time

and place it chooses do not come within the express prohibition of Congress." (316 U.S. at p. 48, 62 S. Ct. at p. 895, 86 L. ed. at p. 1260).

It is submitted, however, that the quoted dictum of the Court means no more than that picketing by a union would be proper if the crew itself did not participate or refuse orders. Certainly the Court did not intended to say that either the discharged crew, or others representing them, could picket to force their rehire when it ruled that the N.L.R.B. order for their rehire could not be enforced.

The shipowner would be no less negligent and the ship just as unseaworthy with an insubordinate crew forced on it by a picket line as it would with the same crew forced on by an N.L.R.B. order.

What counsel ask the Court to tell seamen is, "You cannot strike while you are under articles; but desert the ship or refuse to obey commands until you are discharged and then your articles will no longer apply and you can strike." To state the request is to reject it.

Even a non-maritime employer cannot be forced to rehire an employee discharged for incompetence, illegal conduct or other just cause, *N.L.R.B. v. Fansteel Metallurgical Corp.*, 306 U.S. 240, 58 S. Ct. 490, 83 L ed. 627, 123 A.L.R. 599. In that case, the Court reversed orders of the Board requiring reinstatement of employees who had engaged in a sitdown strike and also employees discharged for incompetence. Further it held that employees who had aided and abetted the unlawful conduct of the sitdown strikers, although not participating in it,

forfeited the protection of the National Labor Relations Act.

The same should apply here. The picketing was one continuous chain of activity, starting simultaneously with the sitdown strike. Although the participants varied, it was always pursued with the same ultimate objective: renegotiation of the articles of the strikers. To hold part of it protected activity merely because carried out by Petitioners, would be to grant them rights as agents which their principals, the crew, did not have themselves. To hold that an employer may be subjected to economic pressure when he discharges an employee for just cause would in no way clear obstructions from the free flow of commerce. Instead it would hamper a management responsibility necessary to the flow of any commerce at all, and in this case to the safety of lives and property.

III. The National Labor Management Relations Act Provides No Remedy to Respondent and the Common Law Remedy of Damages is not Inconsistent with the Act

Petitioners' entire argument is predicated on the assumption that their picketing must have been protected or prohibited by the Labor Management Relations Act. It is neither. Both because of the foreign nature of the dispute and because it is contrary to paramount public policy, as already argued, the picketing was not protected. Neither does it seem to be prohibited.

Counsel for Petitioners state (Pet. Br. p. 26) that "might be argued" and "could be argued" that the

picketing constituted a secondary boycott prohibited by Section 8(b)(4) of the Act (29 U.S.C.A. § 158(b)(4)) and for which a remedy in damages is provided by Section 303 of the Act (29 U.S.C.A. § 187). But they do not so argue and neither do we. It was not a prohibited secondary boycott but primary picketing. The only case cited by Petitioners that considered the question so holds, *Sailors Union of the Pacific and Moore Dry Dock Co.*, 92 N.L.R.B. 547, 27 L.R.R.M. 1108. As already stated, the owner of the drydock there alleged that picketing of a vessel at the drydock was a secondary boycott directed against it. The Board held the ship a transitory situs of the shipowner and the picketing primary.

Even if it were a secondary boycott, the act would provide no remedy. Section (8)(b)(4) makes it an unfair labor practice "for a labor organization *or its agents*" (emphasis added) to engage in a secondary boycott. But Section 303 speaks only of "any labor organization" and provides an action for damages only against them, not against individuals. It would thus be prohibited conduct so far as the Petitioners are concerned for which no remedy is provided. In such cases a common law remedy for damages may be applied. *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656, 74 S. Ct. 833, 98 L ed. 1025.

In *Laburnum*, this Court held a common law remedy of damages available against a union agent guilty of coercive conduct that was both tortious and assumed to be an unfair labor practice. As the Court there stated.

"Here Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct. For us to cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation. To do so will, in effect, grant petitioners immunity from liability for their tortious conduct. We see no substantial reason for reaching such a result. The contrary view is consistent with the language of the Act and there is positive support for it in our decisions and in the legislative history of the Act." (347 U.S. at pp. 663-4, 74 S. Ct. at p. 837, 98 L.ed. at p. 1031).

The *Laburnum case* is the only case this Court has decided dealing with the problem. All of the cases cited in Petitioners' lengthy discussion of preemption dealt with the quite different problem of the extent to which state injunctive processes have been eliminated by protection of the Act and the preventive jurisdiction it vests in the Board. In *Laburnum*, the Court pointed out the difference:

"To the extent that Congress prescribed preventive procedure against unfair labor practices, * * * the Act excluded conflicting state procedure to the same end. To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminal penalties or liabilties for tortious conduct have been eliminated. The care we took in the Garner Case to demonstrate the existing conflict between state and federal administrative remedies in that case was, itself, a recognition that if no conflict had existed, the state procedure would have survived. The primarily private nature of claims for damages under state law also distinguishes them in

a measure from the public nature of the regulation of future labor relations under federal law." (347 U.S. at p. 665, 74 S. Ct. at p. 838, 98 L ed. at pp. 1031-2).

Finally even as regards labor organizations against which the Act provides a remedy, the forum is not exclusive; but includes the forum here employed, a federal district court (Section 303(b)) in a district where the organization sued has "duly authorized officers or agents * * * engaged in representing or acting for employee members" (Section 301(c)). No administrative determination by the Board is necessary before bringing an action for damages, *International Longshoremen's and Warehousemen's Union v. Juneau Spruce Corp.*, 342 U.S. 237, 72 S. Ct. 235, 96 L ed. 275.

CONCLUSION

Respondent respectfully prays that the court affirm the judgments of the Court of Appeals for the Ninth Circuit in so far as they affirm the judgments of the District Court for the District of Oregon.

Respectfully submitted,

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